

1 SBA

2 Washington, DC

3 Size Standards Hearing

4 June 17, 2005

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7 Moderator - good morning everyone.

8
9 Stephanie Watkins: My name is Stephanie Watkins and I'm the Regional Administrator for
10 Region 3 the SBA. My region covers DE, PA, MD, VA, WV and the District of Columbia.
11 Before I get started, I want to introduce the panel members. We have Gary Jackson who is the
12 Assistant Administrator for Size Standards. We have John Kline Associate General Counsel for
13 Procurement Laws. We have Vince Gansotta Size Determination Specialist for Area 3 and one
14 of my star District Directors Joseph Loto who is the District Director for the Washington
15 Metropolitan District Office. So these are your panelists today and we're looking forward to a
16 great day today. I oversee the activities in Region 3 for financial assistance programs and
17 procurement programs and counseling and technical assistance for the SBA. The mission of
18 SBA is to maintain the strength of the nation's economy by aiding, counseling and assisting and
19 protecting the interests of small businesses; and by helping small --helping families and
20 businesses recover from natural disasters. The Size Standard regulation is a fundamental issue
21 within the SBA so it can determine which businesses are eligible for SBA assistance. Small
22 business preferences like Federal contracts and small business assistance from any other Federal
23 programs and regulations. The purpose of the hearing today is to hear from you. We want to

1 hear what you have to say and what your thoughts are, so that we at SBA will be able to simplify
2 size standard regulations and garner any other ideas that you have to make the whole process
3 easier. The testimony today presented at Size Standard Hearing along with other comments we
4 received from the December 2004 Advance Notice of Proposed Rulemaking will be used to help
5 SBA develop new proposals to further those objectives. We also take the opportunity of these
6 hearings to seek the public's views on whether businesses, majority owned by venture capital
7 companies should be allowed to participate in the Small Business Innovation Program. On
8 behalf of Administrator Hector Baretto and myself, we thank you for taking time out of your
9 busy schedule for this vitally important event. I just want to let you know, too, that as Region 3
10 Administrator I have the best region in SBA and my other, my other colleagues aren't here to say
11 that, but we're looking forward to a great day and a very productive day today. I will now turn
12 the hearing over to John Kline who will go over grounds for the hearing; but I do want to let you
13 know some housekeeping rules. I want you to know that through the glass doors by the elevator
14 rest rooms are there – women to the left, men to the right; and also restaurants are downstairs in
15 this building, across the street and down that street. So, let's have a great day and let's learn a lot
16 ladies and gentlemen. Thank you very much.

17
18 John Kline: Thank you Stephanie. As she said, I'm John Kline, Associate General
19 Counsel for Procurement Law [UNINTELLIGIBLE] Let's go over a few things quickly. Again,
20 I'm John Kline, Associate General Counsel for Procurement Law of the SBA. Again, this is a
21 Size Standard hearing. On March 19, 2004, SBA proposed restructuring the size standard,
22 primarily establishing them based on number of employees. We received more than 4,500
23 comments in response to that proposal. After looking at that for a good while, we decided to

1 withdraw the proposal; so on July 1, 2004, we withdrew the rule, specifically rethinking the
2 process of size standards conditions generally and how best to go forth with the process of the
3 Size Standard Program. Based on those comments, we came up with several issues that were --
4 seem to be important to public, we identified those and in that proposal the things that we set
5 forth on December 3, 2004. So on December 3rd we came out with Advance Notice of Proposal.
6 Things that are a number of issues that seemed to be important to the public based upon the
7 comments of the proposed rule, so we specifically ask for your comments. At the same time,
8 we've identified them and we have a number of hearings throughout the country. This is one
9 that ... this is one of those hearings. Let me go over some ground rules quickly. This hearing,
10 as I said, is held pursuant to the Notice to the Public of May 12th to testify for the hearing. Your
11 testimony will be recorded by certified court reporter. When you get to the podium please state
12 your name, spell it and identify the firm or the organization that you are with for the record.
13 Your names will be called in the order listed on the registration docket. If the individual is not
14 present when called, I will again call that name at a later time. Hopefully, they'll be here at that
15 point in time. If not, we'll try again before we adjourn at the end of the day. Each individual
16 will be allowed 5 minutes for all presentations. I will advise you when your time is up. You
17 will conclude at that time. If you need a couple of extra seconds/minutes to finalize what you are
18 going to say that will be fine, we won't cut you off in the middle of a sentence of course, but we
19 are trying to keep to a set schedule. There are a lot of people registered already and we want to
20 make sure that they will get a chance to speak. Members of the panel may have questions of
21 representatives or the individual of a presentation, to clarify or further explain their testimony.
22 So if myself or anyone else on the panel may ask a question for the purpose so you can further
23 explain what your position is on a particular issue. The panel will not respond as to whether it

1 agrees with the view or position of the testimony presented. A discussion of views unrelated to
2 size standards will not – will be stopped. So for instance, if we're talking about real takers for
3 some small business procurement is not good generally, or we think bundling is a bad thing,
4 those issues are not relevant to this hearing and we will not discuss them at this time. Press
5 activities including requests for interviews should be coordinated with the press officer; Raoul is
6 here in the back. I'm not sure if he will be here for the whole day but he'll be here for a little
7 while, but someone else is here just to help you with that if you need it. Please be courteous to
8 others who are testifying -- turn off your pagers and cell phones. So thank you for coming today
9 and we'll get started as soon as I get back thank you. The first person is Barbara Kasoff.

10
11 Barbara Kasoff: Good morning. My name is Barbara Kasoff (K-A-S-O-F-F). I'm here this
12 morning representing Women's Impact on Public Policy or "WIPP". We're a national bi-
13 partisan public policy organization representing more than a half million women business owners
14 across the country and our members have been participating in many of these hearings across the
15 country and will be this morning, as well. We thank you for calling this hearing and affording
16 our members the opportunity to testify. We appreciate the effort to improve small business
17 regulations. Although there are always regulations that can benefit from simplification, for the
18 most part, our members have found that the current size standard rules are workable and are fair
19 and are understandable. There are five points that I would like to make regarding this. Number
20 1, in terms of reduction of the number of size standards; we understand that you're looking to
21 reduce the number of size standards to 10. We don't believe that the number of levels should be
22 reduced simply for the sake of reduction. Rather, there needs to be as many size standard levels
23 as are necessary to reflect the characteristics of sectors and sub sectors of our economy. Number

1 2, regarding annual receipts versus employee-based standards. We favor retaining size standards
2 based on annual receipts for the service sector and we request that you change the definition for
3 receipts from total or gross income to net income. The reason for this is very simply because a
4 number of our member companies provide services or staffing needs at a customer's location,
5 and while their internal staff may be very small, its payroll fluctuates and at times may be very
6 large and we may have to hire a number of employees to complete a specific project, a temporary
7 project for a customer assignment. So annual receipts provide a much more reasonable and
8 accurate measure of the size of such types of businesses. In addition, our members favor a
9 modification of the definition of annual receipts from total income to net income. To the extent
10 we believe that we need to measure the number of employees on a full-time basis rather than the
11 current standard, which counts each individual employee on a full-time, part-time or temporary
12 basis. Many of our employees that are now considered full-time employees are really part-time
13 employees or flextime employees. And this particularly affects our businesses that are
14 predominantly – where we predominantly have women or single parents for whom flexible
15 working arrangements are a necessity rather than a luxury. So we do not believe that you need to
16 – that you should count every employee as a full-time employee. That's especially critical for
17 us. Number 3, regarding treatment of existing small businesses. There's a legitimate concern
18 that any major change in the small business size could result in thousands of small businesses
19 losing their small business eligibility for federal government programs. I think you are aware
20 that many small businesses develop business plans and make key business decisions with the
21 goal of obtaining and maintaining eligibility for small business programs. Regarding micro
22 businesses, the 4th issue, many WIPP members have found it extremely difficult to compete for
23 federal government contracts including small business set aside contracts because of their very

1 small size. In addition, many WIPP members with businesses participating in the 8(a) programs
2 have been unable to reach a level of participation in government contracting that they regard as
3 satisfactory and fair. So we favor the creation of a separate set aside program for micro
4 businesses. And last, number 5, regarding joint ventures. WIPP encourages the SBA to continue
5 to promote joint venture agreements between small business contractors. Such agreements are
6 an important tool for small businesses to be able to compete fairly for government contracts
7 especially given the barriers to access and the contract bundling environment that I noted
8 previously. We request that the SBA identify and eliminate limitations on small business joint
9 ventures except where necessary to guard against fraud or abuse. Thank you for the opportunity.

10
11 Gary Jackson: Thank you Ms. Kasoff, I do have one question, you recommend that for
12 the calculation of annual receipts that we should use a net concept.

13
14 Barbara Kasoff: That is correct.

15
16 Gary Jackson: How would we calculate that? How would the terms of -- what would this
17 mean?

18
19 John Kline: And also, by doing so, would you expect the size standards to increase
20 because of that?

21
22 Barbara Kasoff: In terms of calculating for net income I'm afraid I can't address the
23 accounting necessary to do that. The fact is, is when our companies are primarily service

1 companies and if we don't calculate on net income when we talk about gross receipts, the payroll
2 factor is extremely important to us, so we have to work based on net income where we're putting
3 on such huge numbers of employees for contracts, specific short-term contracts we're unfairly
4 based, we're unfairly sized and we'll lose our status.

5
6 John Kline: Thank you. Next, Bill Lake.

7
8 William Lake, Jr.: Thank you members of the Small Business Administration it is my
9 pleasure to be here today in response to your invitation to give testimony. My name is William
10 Lake (L-A-K-E) Vice President of Information Management Services Inc. Our company has 190
11 employees with offices in Silver Spring and Rockville, Maryland. We have been in business for
12 over 30 years and most of our work is analytic programming support for the National Cancer
13 Institute. We pride ourselves on the quality of work of our employees as exemplified by over
14 200 unsolicited letters of commendation. We do not outsource our work. The Small Business
15 Administration has established programs which have been instrumental in the success of our
16 firm. However, the proposed SBA size standards of March 19, 2004 for the computer industry
17 sector would have disqualified us from bidding on over 80% of our current contracts. We are
18 pleased that the SBA is reconsidering how it intends to simplify its size standards. I'd like to
19 focus our testimony on 5 issues in the AMPRM as they relate to the computer industry NAICS
20 Code 518210, 541511, 541512, 541513 and 541519.

21 1. Approaches to simplification of the size standards. It was originally proposed that the
22 new size standard for the computer industry sector was to have both 150-employee limit
23 and a \$30 million receipts limits. The justifiable intent for retaining the receipts limit

1 stated by the SBA was to “prevent businesses from creatively manipulating their
2 employment levels to remain small.” However, by adding another requirement for the
3 qualifying as a small business would add more complexity to the current receipts only
4 size standard. We do not find the receipts based limits difficult to understand and
5 recommend that the receipts limit be solely used for the computer industry sector such as
6 the proposed \$30 million limit .

- 7 2. Calculation of number of employees. If a number of employees limit is implemented the
8 option should be made to use either the SBA’s methodology as described in the
9 AMPRM of December 3, 2004 or to count hourly paid employees based on total FTE’s of
10 2080 hours a year. A salaried employee should be considered as one person.

- 11 3. Designation of size standards of federal procurements. Using a size standard based on
12 NAICS Codes is acceptable. If, however, there is a conversion from the receipts based
13 size standard to an employee-based size standard, the calculation should be as consistent
14 and unbiased as possible. For consistency the employee limit should be determined by
15 dividing the NAICS receipts per employee ratio into the proposed \$30 million limit. Bias
16 can also affect the employee limit calculation if receipt differences are not considered.
17 For example, in the computer industry companies which derive large portions of their
18 receipts from goods or capital, instead of services such as computer facilities
19 management services web hosting and internet service providers, have a much higher
20 receipts to employee ratio than companies which primarily deliver -- excuse me -- have a
21 much higher receipts to employee ratio which primarily deliver labor services which have
22 little or no goods such as ours. This causes a bias against companies delivering primarily
23 labor services and penalizes them by unduly limiting the number of employees. The total

1 sales value in the 1997 U.S. Census data breached NAICS Code does not make this
2 differentiation and therefore can introduce this bias. To help compensate for this bias in
3 the calculation, the new employee limit should always be rounded up to the higher size
4 bracket and not rounded down. Furthermore, if NAICS Codes are grouped, such as with
5 the 5 computer industry codes, the highest single limit calculated within the group should
6 be used for the entire group, not the average.

7 4. Establishment of tier size standards. We believe that the establishment of tier size
8 standards is not necessary complicates the size standards. Finally,

9 5. Grandfathering of currently eligible small businesses. If the new size standards are
10 defined, they should be inclusive of businesses who now qualify as small businesses
11 under the receipts-based standard. No grandfathering should be necessary. Thank you
12 for providing this opportunity to give our testimony.

13
14 John Kline: Thank you very much; no questions. Next, Marion Bonhomme-Knox.

15
16 Marion Bonhomme-Knox: Good morning. I am retired Lieutenant Colonel Marion (M-A-R-I-
17 O-N) J. Bonhomme-Knox (B-O-N-H-O-M-M-E – K-N-O-X). I am owner and CEO of
18 Knowledge Connections, Incorporated, a government consulting services company located in
19 Stafford, Virginia. My company performs program management, acquisition engineering,
20 contracts and travel management support. We currently have 38 people and revenues of
21 approximately \$2 million per year. We provide support to the Missile Defense Agency, U.S.
22 Marine Corps and the Department of Homeland Security. We were recently awarded three new
23 contracts supporting the defense travel services. I'm pleased to testify today as a member of

1 Women's Impact Public Policy, a national bi-partisan public policy organization, representing
2 more than 505,000 women in business and women business owners nationwide. I'm also here to
3 speak as a service disabled veteran owned business. We are particularly concerned with the
4 restructuring of SBA federal size standards and the effects they will have on small businesses such
5 as my own. I want to thank you and others from the SBA for affording me the opportunity to
6 speak to you today, about the size standard restructuring. Knowledge Connections, Incorporated
7 has business primarily under program management, travel and information technology
8 consulting industry areas. These are the areas in the federal government in which services are
9 primarily performed by 12, only 12 large corporations with widely used government wide access
10 contract vehicles. WIPP understands SBA's desire to improve the small business size
11 regulations and share SBA's designs goal which is a simplification and clarity with regard to
12 what constitutes a small business. After all, no small business wants to find out that they have
13 been competing against large businesses or affiliated cartels that gain the federal contracting
14 system. Although simplification of a federal regulation is almost always beneficial to small
15 businesses, WIPP members have found the current size standards rules to be for the most part,
16 workable, understandable and fair. WIPP told its membership and worked with its Procurement
17 Committee of which I'm a member, to respond to the proposed size standards. Here's what we
18 found. First we understand that SBA is considering reducing its size standard to 10 levels.
19 WIPP members have found the SBA's use of the North American industry classification system
20 and its detailed categorization of industry sub sectors to be helpful in determining the applicable
21 size standard for their businesses. The North American industry classification system is already
22 a well-recognized and accepted standard. Secondly, WIPP favors retaining size standards based
23 on annual receipts for all sectors and requests that SBA change the definition of receipt from

1 total or gross income to net income. In reference to the question that was asked previously, it is
2 in consideration of elimination the cost of goods sold and other factors. Take a look at what is
3 done with the travel industry code. A number of our WIPP members own companies that
4 provide services or staffing needs at a customer's location. In services industry a company's
5 intro-staff may be small, but as the payroll fluctuates it may become large. As a consulting
6 service company I can grow significantly in one year's time, but the average across that year
7 may still not be so large. This is also true for companies that hire temporary staff for a particular
8 customer assignment. Annual receipts provide a more reasonable and accurate measure of the
9 size of such business. WIPP expresses no opinion as to whether all small businesses should be
10 subject to an annual receipt or other revenue based standard. To the extent SBA continues to use
11 the employee based standards however, it should measure the number of employees on a full-
12 time equivalent basis, rather than continue the current standard which counts each individual
13 employee on a full time, part-time, temporary or other basis. One of the keys to success for
14 many women entrepreneurs is flexibility in employment. WIPP believes that a rule which counts
15 every employee as full time employee even though he or she may be working part-time, in a job
16 sharing arrangement, has a negative impact on many employees of small businesses, especially
17 women and single parents for whom flexible working arrangements are a necessity rather than a
18 luxury. We do not believe Independent Contractors should be treated as employees of a small
19 business concern and payments to them by the small business should not be treated any
20 differently than any other business expense in determining net income. Our members have
21 expressed a legitimate concern that any major change in the small business size regulation can
22 result in tens of thousands of businesses losing their small business eligibility for federal
23 government programs. As SBA is aware, many small businesses develop business plans and

1 make key business decisions with the goal of retaining and maintaining their eligibility. [Am I
2 beginning to run out of time] Let me go on to another one. Many WIPP members have found it
3 extremely difficult to compete for federal government contracts, including small business set
4 aside contracts, due to a lack of capital to facilitate growth and found that all consolidated
5 contracts _____. WIPP favors the creation of a separate set aside program for micro businesses
6 although the recent pilot program act for businesses may have only limited access. WIPP
7 believes that such measures are necessary to provide micro businesses with access to government
8 contracting especially in today's environment of contract bundling by procurement agencies.

9
10 John Kline: You've passed your time; your last few sentences please.

11
12 Marion Bonhomme-Knox: I personally believe that the current size standards define the
13 maximum size in a nationally accepted small business can -- need to be considered small. The
14 category of micro business should have as its upper size limit to statistically determine typical
15 size of the majority of small businesses in a particular area and there should be set asides for
16 these small businesses that are up to \$2 million. Thank you.

17
18 John Kline: Okay. The next person will be Jim Morrison.

19
20 James Morrison: Good morning. Thanks for allowing me to appear here this morning. I'm
21 James Morrison. I'm here today representing the National Small Business Association. The
22 NSBA is the nation's oldest bi-partisan advocacy association of small businesses. It was
23 founded in 1937; has 150,000 members across the United States in all states. I'm here today to

1 address one part of the rulemaking you're considering that is the access of venture capital
2 accomplished with the SBIR program and the size standards that would affect them. I'm here
3 less to deal with the technicalities of that than talk about its national impact. The current
4 regulatory environment governing the venture capital access to the SBIR program has basically 3
5 prongs. A venture capital company of any size may hold a minority interest in an SBIR
6 company. Secondly, venture capital companies that are small by SBA standards may hold a
7 majority interest in an SBIR company, as long as the combined entity is small and as to the
8 venture company itself is individually owned. Thirdly, venture capital companies that are large
9 may hold a minority interest in SBIR companies, but not a majority interest except for phase
10 three of the SBIR program, which is the commercialization phase when Congress and the SBA
11 does anticipate partnerships between small and larger companies. The question that is really
12 before the SBA is whether large VC's or institutionally owned VC's may hold a majority interest
13 in companies that are participating in the Small Business Innovation Research program. To
14 allow this would entail waiving SBA's affiliation rules for the first time in the 50-year history of
15 the agency; and then to create a situation in which arguments for equity could be raised and I
16 think would be raised that universities and large businesses should also have access to the
17 program via venture capital companies that they own. And to raise issues concerning the
18 application of the affiliation rules to other small business programs. In our view, to allow large
19 companies to own or control SBIR companies in Phases 1 and 2 of the SBIR program is
20 essentially to remove the "S" from SBIR. It is to change the character of the program from one
21 of a small business innovation research program to one of an innovations program. I think an
22 argument can be made that venture capital companies, especially in the biotechnology field
23 which has been particularly avid here, should have a kind of program that will meet their needs,

1 but I don't think that program is the SBIR program. We have encouraged them to try to find a
2 way that will meet their needs.

3
4 John Kline: Do you think it would adversely affect other small businesses in the
5 program? Is that what you're saying?

6
7 James Morrison: Well, yes; not only in the program and I think other speakers today will
8 address that in more detail. But I'm really concerned about the presence that they speak that they
9 call small business programs. What you would be fundamentally doing in our judgment, is
10 violating the core principal in a Small Business Act that defines a small business. 15 USC 632
11 which says, "A small business is one that is totally independently owned and operated." That's
12 been the law since 1953. You're setting a legal precedent that could be brought to bear against
13 other programs, the accepting lending program, for example, the surety bond program, the
14 government contracting programs, the role of the Office of Advocacy in distinguishing large and
15 small businesses is already three of them. So we are asking that this existing 3-prong approach
16 to venture capital company access to the SBIR program included the regulations affecting it that
17 were implemented last December be maintained. We think it is in the interest of small business
18 generally, we think it is in the interest of the SBIR program and we believe that is the intention
19 congress has had for this program since it was created in 1982.

20
21 John Kline: Okay, thank you very much. The next speaker will be William Joern.

22
23 William Joern: [hands to panel a hard copy of testimony outline]

1
2 Good morning. My name is William C. Joern (J-O-E-R-N), Vice President of the International
3 Center for Language Studies, Inc. which is a private business here in Washington, DC and has
4 been operating since 1966. We appreciate the opportunity to make some comments. I have had
5 the occasion to visit, telephone or e-mail with Gary Jackson over the last year and despite what
6 President Bush thinks, he has the toughest job in Washington currently. The International Center
7 for Language Studies is a private for profit business and was incorporated in DC in 1966. We
8 have provided foreign language and English as a second language training to many U.S.
9 Government agencies, international financing entities and others. The U.S. government agencies
10 that we provide language training to very importantly, for purposes of this discussion include the
11 Department of Defense, Federal Bureau of Investigations, AID and some others that require what
12 are called critical language needs, often times on an immediate research basis, such as the period
13 after 9/11. The ICLS also was bought by a woman seven years ago with an SBA guarantee loan
14 from Adams National Bank. The last payment on that loan, incidentally is just later this month.
15 One thing that you need to consider is this effect of any changes like this on your other programs
16 certainly. At the time that the loan was obtained, if you used the same standard that you're
17 proposing this woman would not have been able to obtain that particular loan under your
18 program. The original --Oh, let me make one other point your original notice came out in
19 relatively early 2004. As I mentioned, we have served the Department of Defense and for over
20 20 years it is one of our largest clients and actually we obtain about 25% of our income from
21 them. We were scheduled to re-compete a contract late last year, it finally came out early this
22 year and it came out as a total small business set aside. If your original proposal had been

1 completed and implemented, ICLS would have been ineligible under that new rule to serve the
2 Department of Defense on a continuing basis because of the change of the size standard.

3
4 John Kline: The rule for the standard would have cut you out of everything?

5
6 William Joern: Absolutely.

7
8 John Kline: And currently you are a small business on the receipt basis?

9
10 William Joern: Yes, I'll come – in fact, I was just going to come to that point to how the
11 calculation works. We are approximately half the size of the current standard. The current
12 standard is \$6 million; we are about \$3 million. However, the way the employees are counted
13 under the proposal. We are about 2 to 3 times as large as your proposal. The proposal is 50. We
14 are anywhere between 100 and 150 on the way you calculate it. Any payroll period it might be
15 75; on a quarterly basis it might be 100; for the entire year it might be 150.

16
17 John Kline: The people in the back are having trouble hearing you.

18
19 William Joern: Oh, I'm sorry. Thank you. Let me just begin that point again then. We
20 would have been ineligible on the basis of the new proposal because of the way it's calculated.
21 We are about 50% or \$3 million in revenue of the \$6 million standard today. However, under
22 the new proposal of 50 employees we would have been ineligible because of the part-time and
23 other workers that we have. We normally have 75 on a bi- or monthly payroll, 100 on a

1 quarterly and over the course of the year about 150. Why? The why is because we provide
2 language services in very – in uncommonly taught languages. This became extraordinarily
3 critical to DOD following 9/11. Because we were able to produce for them, language training in
4 such languages as Dhari Pashto, additional Arabic and that sort of thing. That capability which
5 that government agency as well as the FBI, and the AID and so forth, and not unlike other
6 companies who have worked closely with government agencies has nurtured that capability over
7 all of these years in order for it to provide very specified training. You can't get the kind of
8 language training or you can't get the kind of other kinds of services that the government wants
9 often times, that are very specific. You can't go to University of Maryland to get the kind of
10 language training that produces the results for the Army or the Air Force or the FBI. It's very,
11 very specific in terms of its technology, its techniques and its methodologies. Those other
12 people just don't do that.

13
14 John Kline: How does that work in terms of the 100-150 employees you have? Are
15 they on your books as hirees?

16
17 William Joern: We recognize a person when we bring them on as an employee, and we
18 treat them as an employee as far as the basics, Social Security, etc. Some of our competitors
19 actually put them on board as independent contractors or consultants, which we feel is not only
20 unfair competitively but may be borderline as far as the IRS is concerned. When a person is on
21 our books as an employee it means that they're paid, however. In other words, when I said 150
22 for the entire year, those are the number of W2's that are issued at the end of the year. We have
23 on our books, however, 350 to 400 people full- and part-time, but it is the number who are paid,

1 that I was referring to. Also, I think that the way in which these companies are organized, and it
2 has been reflected in the other comments already, is the changing nature of the workforce. That
3 is, characteristics, preferences of many people to work part-time and the requirements of various
4 companies to have part-time people available to them. Additionally, if you were to make any
5 kinds of calculations as far as full or part time, I think you need to go into not only the
6 independent contractors, but subcontractors and others and arrive at some way in which you can
7 define the hours worked for that for the small business and then translate that into some FTE
8 equivalent of perhaps 2080 hours.

9
10 John Kline: Okay, your time is running out already.

11
12 William Joern: Well, you see some of the recommendations I made there? We'd be
13 willing to discuss this additional written testimony.

14
15 John Kline: Good. Thank you very much. One more question.

16
17 William Joern: Okay.

18
19 Gary Jackson: Thank you Mr. Joern. Just one question: If SBA can propose a full-time
20 equivalent calculation for number of employees in terms of the testimony already we've heard
21 and agreeing with that kind of concept, would that have made the proposal have less of a
22 negative impact on –

1 William Joern: Less negative, but we would have been very, very borderline at that time;
2 very borderline.

3

4 Gary Jackson: My question concerned if using full-time equivalents without making an
5 impact on the company in terms of size, a related question if SBS moved to a full-time
6 equivalent, do you have accounting systems and payroll processes that you can easily calculate
7 and combine that information?

8

9 William Joern: Easily is an interesting word. Yes, we do. As I said, it would have been
10 very borderline. And let me just add one other point on that -- that the -- one of the original ways
11 I guess that you calculated things was 50 employees balanced against \$6 million, which would
12 be \$120,000 per employee. That does not really match reality as far as our industry is concerned
13 or the NAICS Code 611630 and so forth which my recommendation needs to be analyzed. The
14 full-time equivalency revenue, if you will, for employees in that area we calculate on the basis of
15 far less than \$150,000. So it goes to your question I believe, Mr. Jackson, in the sense that on
16 the basis for which a full-time equivalent -- a receipts is translated into a full-time equivalency, it
17 needs to be really analyzed very, very carefully based on the specific industry sector.

18

19 John Kline: Thank you very much. Our next speaker will be Caroline Watler.

20

21 Caroline Watler: Good morning. Thank you for the opportunity to testify. I'm Caroline
22 Watler (W-A-T-L-E-R), President of Circle Solutions, Incorporated. We're a small women- and
23 employee-owned professional services company, located in nearby Northern Virginia. We're

1 primarily a government contractor providing multiple health and safety related services by our
2 employees to a variety of federal agencies and a number of private contractors. We're a
3 successful graduate of the 8(a) program over 13 years ago and right now we're preparing to
4 celebrate the company's 25th anniversary in October -- a very rewarding accomplishment and
5 one both our bank and our auditors call huge. We survived the devastating impact of the 1995
6 government shut down and are enormously proud of our outstanding past and current
7 performance record. We want to continue our fine work into the future and we hope that SBA in
8 its considerations will assist firms like us and not create roadblocks or contribute to our demise.
9 If SBA were to implement the original March 2004 proposed changes, we would no longer be
10 eligible for approximately 80% of our current work, a number you've already heard from another
11 firm. We commented on both the March 2004 Proposed Size Standard Restructuring and the
12 December Advance Notice, and we recently submitted requests for new and expanded NAICS
13 Codes as well as comments to OMB about the 2000 revision of the NAICS. Copies are available
14 if you are interested in those. As a government contractor, my comments are directed primarily
15 toward federal contractor and contracting issues relating to size standards. First, we strongly
16 recommend that SBA retain the revenue-based system for size standards determination. What is
17 complex or hard to understand about a receipts-based calculation that averages the last year of
18 business into tax returns documented to the Internal Revenue Service. We don't see this as
19 difficult at all to understand but do feel the potential addition of calculating the number of
20 employees on a rolling monthly basis to be cumbersome especially in light of certifications
21 required as part of your federal procurement process. We also recommend that SBA make sure
22 additional NAICS Codes are added as needed and appropriate size standards are assigned and
23 ensure that existing NAICS Codes include adequate definitions to assist government officials in

1 assigning the most appropriate codes to work that need done. We do believe in inflation
2 adjustment of the existing size standards is also called for at this time and I understand that may
3 be in progress. We also believe that the definition of a small business as having fewer than 500
4 employees and not being dominant in its field is accurate and should remain. This was the
5 definition I first read in 1983 while working on my Master's thesis without factors influencing
6 the success of small business and one I think still holds. Since that time I have not read a strong
7 argument for why the numbers should be reduced. In fact, within our business we're currently
8 experiencing a far greater ratio of staff labor to non-labor requirements within our contracts. So
9 far this year we have a 40% increase in the number of employees with a comparable revenue
10 level to last year, purely the results of contract requirements and largely a function explosion of
11 required information technologies. The establishment of separate size standards for federal
12 determinants may indeed be necessary. In the federal procurement arena, the NAICS Codes and
13 size standards are used in two different ways. (1) To designate the dominant work to be
14 accomplished within the contract, and (2) to clarify the criteria for small business eligibility.
15 Too often, this feels like a forced fit, especially with multiple related requirements within a
16 single procurement. Additionally, the requirement of today's scopes of work and evaluation
17 criteria necessitate larger size standards in order for the government and large businesses to meet
18 small business contracting and some contracting requirements. No matter what decisions made
19 by SBA, we believe grandfathering currently eligible small businesses will be essential to allow
20 time for businesses to plan for the potentially devastating future impact. Even if the 30-day
21 implementation requirement goes into effect, we believe a minimum of one-year transition and
22 the completion of existing contracts should be accommodated. A couple of other comments on
23 improvements to size standards; we believe it is important for SBA to place greater emphasis on

1 continuing to support existing small businesses with a successful track record as well as
2 encouraging new and smaller businesses. The gap between a larger \$6 million company and its
3 \$160 million or more big business counterpart is usually too great for the smaller firm to
4 successfully end up with the market. It's just too big a gap. We also believe that many
5 contracting offices specialists as well as small business specialists would benefit from further
6 training about assigning of SBS Codes. As contractors, we see many discrepancies that we
7 believe are unnecessary. So in summary, if the government is going to honor its commitment to
8 small business and set aside contracts and encourage and even enforce large businesses to
9 subcontract to small businesses, there must be NAICS Codes that accurately reflect the
10 procurement classification system that accurately reflects the industries needed and appropriate
11 size standards that allow small businesses to meet the requirements. We believe SBA is our
12 representative in government and hope you will work to encourage us rather than put us out of
13 business or force us to get smaller as a way to survive. Thank you.

14
15 John Kline: Thank you. Gary?

16
17 Gary Jackson: You have mentioned that if SBA had adopted its proposal, it would
18 negatively affect your business. How does it affect it your competitiveness, the ability to
19 compete with larger businesses, businesses half that size, or is it the nature of government
20 contracts, the general nature of bundling and the overall size of contracts today?

21
22 Caroline Watler: You're talking about the March 2004 where there're limits on --

1 Gary Jackson: Right. If you were no longer a small business, you are concerned now
2 with sector business, what – again, is it because of the competitiveness against your competitors
3 that are large or is it the nature of the size of the contracts?
4

5 Caroline Watler: Some of both. Certainly when -- For a company like us that provides
6 nearly all of our services through our own employees, space, the size of the business outnumber
7 the employees. It's viewed against us and especially a lot of those employees are not highly
8 paid.
9

10 John Kline: Thank you. The next speaker will be Ronald Segal. [Is anyone in the
11 back not hearing what's going on? Is that still the case? From both?]
12

13 Ronald Segal: My name is Ronald Segal. I'm Preside and CEO of Spectrum Systems,
14 Inc., a 19-year old IT company based in Fairfax, Virginia. We provide information technology
15 services and commercial office sales software products. That's a reseller. I'll refer to the second
16 category as COS products, which is OID jargon. I fully support the SBA's desire to simplify and
17 restructure small business size standards and focus on a much smaller number employee-based
18 standards. However, I question the SBA to be careful that it doesn't cause disruptions by using
19 an oversimplified one size fits all approach. As both government and private sector
20 organizations seek more and more to engage each solution providers that solve problems that do
21 acquiesce multiple NAICS Codes even the smallest of businesses are increasingly engaging in
22 activities that request multiple codes. In a given procurement, a company may have significant
23 competitive advantages or disadvantages depending on its classification and its mix of business

1 relative to other competitors in that particular procurement. I'd like to give a very specific
2 example that exists today. It's one that a number of companies that we work with and partner
3 with are fed focusing. In our case, our primary is in the area of developing or optimizing and
4 managing application software systems. We accomplish this by combining software productivity
5 products as a reseller with high quality services. A typical sale for us or order or contract might
6 include a very large component of COS products that will resale at a much smaller, in terms of
7 revenue, services activities. The services activities is typically focused on helping our customers
8 utilize and implement the software that we sold to them in an efficient manner and does not often
9 generate a very large dollar percentage of the sale. As everyone is aware, the government has
10 become proficient on negotiating aggressive pricing for hardware and software products. The
11 future of our company clearly lies in expanding our services business as a component of our
12 overall sales. Unfortunately, last year we were very successful in selling some – in obtaining
13 some very large software sales at miniscule percentage margins. Because of this, we now exceed
14 the \$21 million standard by a teeny bit, NAICS Code 5145112 what that means is our 35-person
15 employee is now classified as a large business for most competitive procurements. This
16 classification effectively eliminates us from competing in any aspects of those procurements. (1)
17 We are not eligible to participate as a small business either as a prime, a sub or a teaming
18 partner; (2) At our size it makes no sense whatsoever to compete as a large business and meet all
19 of the requirements including subcontracting COS on a large business; and (3) we can't really
20 subcontract to a "real large business because they're not interested in engaging a 35-person
21 partner that's going to count in the wrong direction for their small business quota. The current
22 regulations are emphasizing number of employees rather than receipts. In our case, that can't
23 happen fast enough. However, I do have to mention that there are two sides to this coin and

1 companies that are primarily services based will face the opposite problem in competing with
2 companies like us for product sales. And you heard an example of that earlier this morning from
3 another speaker. I recommend that the SBA will give one of three approaches to what I am
4 referring to as the cross- industry problem. (1) Apply whatever size standards that are designated
5 by procurement official holds to the relevant business activities of the contractor. In our case,
6 apply it only to our services sales, not to our total receipts. It's reasonable if you ask a company
7 who qualifies in this situation that they keep separate, consistent records separating the business
8 activities and I believe most companies do. The second approach is the "either / or" approach
9 which is, either receipts or number of employees. In this case, it would be acceptable for us to
10 even tighten up the standards that will come before each of the sides of the "or" equation. The
11 third approach is one that we used to be able to use historically and we no longer use, is to
12 classify each company once based on the NAICS Code of their predominant business and let
13 them use that classification for all procurements rather than a classification that would have to
14 live under change or an opportunity by opportunity base, based on however the procurement
15 officer designates.

16
17 John Kline: Your time is about up.

18
19 Ronald Segal: I'm exactly finished. Thank you for your attention.

20
21 John Kline: Thank you very much. Our next speaker is Jonathan Cohen.

1 Jonathan Cohen: Good morning. My name is Jonathan Cohen. I am President and CEO of
2 a biotech company called 20/20 Gene Systems, located up the 270 corridor in Rockville,
3 Maryland. We're housed in an incubator facility which is a collection of – in our case, primarily
4 biotech companies and a few IT companies. It's also based up in Rockville. Our company is
5 focused on solving highly innovative proprietary diagnostics for bio-defense, cancer and
6 autoimmune diseases such as Lupus. To date, we've received about a half a dozen SBIR awards
7 of Phase One. We have launched two products, one of which is very successful, generating more
8 than half a million dollars in revenue. It has succeeded in attracting about \$2.5 million in
9 investment from a combination of both individual investors known as angels as well as some
10 small institutional investments as well. Prior to starting 20/20, I worked as in-house counsel for
11 two publicly traded biotechnology companies. The SBA should not change the SBIR size
12 standards to permit companies owned by large venture capital firms to qualify for SBIR funding,
13 because to do so would, in my view, cause great harm to our nation's bio-technology industry
14 and would likely delay and in some cases actually prevent some of the most innovative and
15 important technologies devices and drugs from reaching – from going from the laboratory bench
16 to the patient's bedside. The SBIR process, particularly at the NIH, is extremely resource
17 intensive. It takes a lot of manpower time and money to prepare these applications and I fear
18 that opening up the program to companies owned by deep-pocketed investment firms would in
19 essence allow them to siphon off a substantial portion of the mere 2.5% of the Federal R&D pie
20 set aside for small businesses to, in effect, what the end result, in my view, would be that that
21 2.5% could very well be a 1% or .5%. For better or for worse, success in the SBIR program is
22 largely a function of shot sign goal. That is the consensus of that from our experiences and the
23 consensus of a lot of other people, if the ability to get to file multiple applications, and single

1 applications and to bring on outside experts and so forth would be a huge advantage to the well
2 financed companies that are owned by large venture capital firms. Now what is the consequence
3 of that to our country, to the nation and so forth. I think there are several real feat consequences.
4 First, it would shift research away from the small companies that are focusing on the areas of
5 R&D that are out of favor with Wall Street at any point in time. Today, for example, certainly in
6 the last few years, there has been very little interest in the VC community to fund bio-defense,
7 vaccine development, diagnostics, which is our field, research tools development, technology
8 platform development. Yet these are the very fields that a lot of small innovative via the
9 companies are really focused on. Secondly, it would decrease support for a lot of the higher risk
10 projects. In my written testimony which I provided you, I provide a quote from a columnist for
11 *Genetic Engineering News* that follows on a monthly basis trends of biotech investing; and I
12 think he puts it very well. There has been a tremendous change in bio-tech in the last five years
13 in a movement, since the so-called bubble burst of 2000, which was of course, not only the
14 internet bubble, the genomic bubble burst at the same time. It has been a flight from risk, a
15 flight from the kinds of projects that we absolutely have to have in order to beat cancer, in order
16 to protect us from bio-terror agents, and toward late stage drugs with late stage clinical trials with
17 ample data behind them. And those are important projects, but it's not everything. And the
18 SBIR program plays a vital role basically as a backstop to providing -- In many cases, the only
19 source of funding for companies that are in these higher risk areas or is developing technology in
20 areas out of favor with Wall Street. Also, it would, in my view, deter venture capitals from
21 deploying these staggering, eye-popping \$50 billion of uninvested capital that they are sitting on.
22 It's remarkable to me, that this community is pushing for small business grants when they have
23 so much money on the sidelines. Just to put this in perspective, if the entire NIH SBIR set aside

1 2.5% or deployed 100% to venture capital companies, in 50 years would not equal the \$50
2 billion that they now have in their office; and we need to get them to get that money off
3 sidelines. This change, in my view, would do the opposite – it would encourage them to
4 continue to husband those resources and let the Federal grants fund the portfolio companies.
5 Finally, these changes would in my view, discriminate against regions such as Maryland and do
6 not have a sizeable life science VC community. They have an IT VC community in Maryland,
7 but not many life science VC's, in contrast to the Bay area of San Francisco and also in the
8 Massachusetts area where there is a sizeable VC community. So I think a lot of regions of the
9 country would suffer if these changes were implemented. In my own entity, the Maryland
10 Technology Development Center, for example, since we've been there in 2001, I'm not aware of
11 a single company that closed a first round of venture capital that had not already been funded
12 prior to us getting there. So there's one or two "B" rounds or "C" rounds, but not a single
13 serious "A" round in our facility. Needless to say, most of the biotechnology of course at the
14 MTDCR solidly opposed to the position of the biotechnology industry organization on this issue.
15 It is very, very clear. We had a meeting on this topic about six months ago. Virtually
16 everybody, to my knowledge, was basically in line with my views on this issue. Simply put, the
17 company that is majority owned by a large venture capital firm is not a small business. It does
18 not act like a small business. It has a different culture. The CEO has a fiduciary duty to his or
19 her shareholders. It has a lot of mouths to feed, and if you have pension funds -- If you're
20 majority owned by pension funds and insurance companies, you've got to focus on the big
21 markets. That's what your shareholders invested in.
22
23 Am I over my time?

1

2 John Kline: Yes.

3

4 Jonathan Cohen: Okay. So, I guess the remainder of my comments are in my written
5 testimony. One last thing I'd like to point to is that I do think that large businesses should be
6 entitled to Federal support for certain categories of research, but not the SBIR program. The
7 other 97.5% of the Federal R&D pie is precisely where these companies should be directing their
8 efforts, not the small 2.5% set aside for small businesses. Thank you.

9

10 John Kline: Thank you very much. Our next speaker will be Vicki Tarallo -- nothing
11 from Vicki (T-A-R-A-L-L-O). Okay. Arnold Jolivet -- no? Okay. Tim Foreman. George
12 Spencer.

13

14 George Spencer: Good morning ladies and gentlemen. I'd like to thank you for this
15 opportunity to talk to you today on the Proposed Size Standards. My George Spencer (S-P-E-N-
16 C-E-R). I'm Executive Director of KeyLogic Systems. KeyLogic is an 8(a) certified small
17 business based in Region 3 in Morgantown, West Virginia. Recently, we were selected as a
18 small business of the year in West Virginia. In order to provide you some context for my
19 remarks, I'll describe the calculator we're agreeing with. We're focused on the Federal IT
20 market, primarily in the mid-Atlantic region. Our core competencies are Business Intelligence,
21 Knowledge Management, Program Management, specifically, Earned Value Management. Our
22 oldest customer is the EPA. Our largest customer is the Defense Information Systems Agency or
23 DISA. Last year we did \$6 million of work. We hope to do \$9 million this year. We're listed in

1 the Washington Technology Fast 50 and Inc. 500 and obviously we're growing through those
2 size standards recently rapidly, so we really care about issue. In general, our position is
3 consistent with our remarks we gave you last June and then again, earlier this year. We believe
4 that the need for rulemaking has not been shown. We don't think it will accomplish your
5 mission of simplifying the standards and we honestly think that overall, the size standards are
6 going to harm small businesses, contrary to your mission. I'm going to talk about a couple of
7 different areas here. Small businesses face two major hurdles as they develop and grow. The
8 first revolves around the need to develop in-house capability infrastructure and a track record of
9 successful past performances. I'll talk more about the negative impact of the end problem later
10 when I discuss why staff-based staffing is bad. The second major hurdle revolves around the
11 leap from small business to large business competition with the giants of industry. These
12 proposed changes do nothing to help small businesses in either area and in fact, exacerbate the
13 problem. As noted in last year's Eagle Eye Report, there were a number of large business
14 competitors who are receiving small business award credit because of among other things, they
15 buy up small businesses and keep the contract; they are awarded dollars and then the SBA credits
16 that \$2 billion of inappropriately labeled small business activity. I recommend you focus on
17 enforcement of the existing standards, rather than modified. Why don't the standard suggestions
18 help? Let me address a couple of areas. Why are revenue-based standards better for small
19 business than staff-based standards? There're several reasons. Receipts-based standards are
20 easy to understand and enforce. Currently, once a year, a small business determines its receipts
21 based on the revenue reported to the IRS and that number is an industry and accounting standard,
22 accuracy is enforced by the IRS Tax Code. For purposes of small business sizing, a firm simply
23 averages the last three years of revenue receipts and instantly knows how to respond on all

1 procurements for the next year. Further since firms know what the previous two years of
2 revenue was with absolute certainty, and have a good estimate of the current year's revenue,
3 clear and confident forward estimating of business size is simple. In fact, you can estimate
4 probably more -- in our case, two years ago we did \$5 million in revenue; this year we ... less.
5 Six months ago we closed at 6. Clearly, I know what ... I have a good estimate of next year. So
6 I can look ahead a year, year and-a-half, and know where I'm going to fit in those net codes as I
7 look to pursue opportunities. To summarize, revenue-based is simple, understandable by all, and
8 done once. Staff-based calculations on the other hand, require recalculation of a firm's business
9 size every two weeks. Think about that. Every -- 26 pay periods a year on a rolling annual
10 average literally our business size can fluctuate every two weeks. We have a small, then large,
11 then small, then large. It's a -- and it's based on accounting standards and processes that aren't in
12 place and aren't easy to audit from an outside -- and frankly, are subject to advantageous
13 finessing by firms on the cusp. To summarize, staff-based calculations. Complicated
14 calculations done frequently, hard to audit and not well enforced. Again further, staff-based
15 calculations will lead to gaining by firms as they attempt to permanently or on a short-term basis
16 maintain their small business status. SBA should be assisting small businesses to overcome that
17 first hurdle by developing in-house capability, infrastructure and a track record of successful past
18 performance. Staff-based calculations will work against those goals by encouraging a small
19 business through its revenue base and profits while capping internal staff size through the use of
20 subcontracting and 1099 employees, rather than building true small business capability. Further,
21 when eventually the firm outgrows its small business status, it will have an even greater hurdle in
22 competing with really large businesses because they won't have that internal capability. To
23 summarize that, staff-based encourages outsourcing the work to fit within staff caps. Hub zone

1 firms are at an even greater disadvantage under staff-base systems. By the nature of hub zone
2 programs, the hub zone program, firms are required to maintain at least 35% of its employees
3 from an economically depressed area, i.e., hub zones, SBA calculates and calculations that
4 encourage firms to limit their internal staff size while growing revenue have a direct impact on
5 restricting hub zone staff employment by the small business system 35% of the size standard
6 regardless of how much revenue the company brings in, obviously through subcontracting and
7 outsourcing. That's contrary to the intent of the Congress when it set up the hub zone program.
8 Further, and I don't have numbers to back this up, I'll postulate that hub zones, because of the
9 requirements to maintain 35% of their staff from economically depressed areas, probably
10 generate a lower amount of revenue per staff member than a company that isn't in an
11 economically depressed area. So what circumstance there is for any given size standard, we're
12 going to have more staff and less revenue. Conversely, using a revenue-based standard, a hub
13 zone firm would have more staff, thus, directly more hub zone residents than a comparable small
14 business of the same revenue base. To summarize, staff-based –

15
16 John Kline: If you could wrap that – your time is about up, please.

17
18 George Spencer: Let me just say a couple of things, and that is, we support the – an FTE
19 approach because hub zone companies already have to do FTE calculations for their 35% . And
20 lastly, we think that one thing that would ease the hurdle from small to large would be to use a
21 Canadian revenue base, but use a five-year window instead of a three-year window which would
22 effectively move the – allow small businesses to have one additional year to make that giant
23 hurdle from being small to competing against a Lockheed Martin.

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John Kline: Thank you very much. The next speaker is Vanessa Ali. Okay. Vinod Goyal, Ulises Vidal.

Ulises Vidal Martinez: Good morning. My name is Ulises Martinez. I represent a company called NOVUStar. We are a service disable company. 8(a) certified. I do believe I represent a really small business. I came to the United States – even though I was born in the U.S. I grew up abroad and I came back about 18 years ago, didn’t speak much English. The last 15 years I’ve been learning how to basically grow a business and conduct business with other companies. Believe it or not, when I was signing up for this meeting here, I was told basically, that it was more related to companies that haven’t been able to do business because other large companies are taking business from them, and that’s what I was prepared for. I spend about a week talking in the mirror and doing -- actually getting ready for it. This is my first time actually in this kind of position. This morning when I got up around 4 o’clock and I look at a proposal, it’s totally separate of what I have prepare for. But I said, “You know what, I’m going to go there and listen to what the other business owners are going to talk about it.” But, how long a baby is still a baby? How long a child is still a child? How long a teenager is still a teenager? I hear companies here that have been in business for 38 years, 20 years, and it seems like they don’t want to grow from small business status. At what point does successful established company should actually move up and give room for other companies to have had their skill level of success that they have accomplished. I hear about another biometric company here. It seems to me that the person is very knowledgeable, very successful, have the necessary skills to bring a company from nothing practically, to a public status. I wish I have those kind of skills,

1 because I have a lot of great ideas and I wouldn't actually base my business development skills
2 on the service disable or 8(a) certification. Another thing that caught my attention was in the
3 proposal I read that the concerns of March 19, 2004 proposal was the potential impact on a small
4 business that might lose the small business eligibility as a result of restructuring of size standard.
5 Another thing that caught my attention was abrupt changes that take away a small business
6 eligibility significantly disrupt this business plan and force business to re-assess their availability
7 of their strategy. You know, since September 11th we were actually growing about 22-25% a
8 month. And that was basically competitive bidding; no size standard or nothing. September 11th
9 came we basically went into debt over \$200,000. And basically, have taken us up to the
10 beginning of this year to realign our business model and be able to compete effectively against
11 other companies. I got to tell you this. I actually have a question for the panel. Do you know
12 how many small business are listed on the SBA database? Approximately?

13
14 Gary Jackson: About 180,000.

15
16 Ulises Vidal Martinez: Well, this morning since I'd basically I have not do what I was going to
17 say this morning, I went out and did a research and it appears to be about 294,000. It appears to
18 be approximately 294,000 small businesses. Out of those, I went ahead and basically did a
19 breakdown of companies that have about 500 employees; how many companies are there
20 registered; and it came out approximately 1,149. Companies that have approximately 400
21 employees; it came out to approximately 2,258. Companies with 300 employees; came out
22 approximately to 3,748.

1 John Kline: You have five minutes now.

2

3 Ulises Vidal Martinez: So the feeling is that companies with under 100 employees, the
4 total amount for – that are registered is about 200,000 companies. I don't know if those numbers
5 from the database are realistic or true or ... But what I'm saying is I don't understand the
6 concern of the proposed rule when the numbers actually are saying that companies with less than
7 100 employees are the majority of companies. And, I think problems have to be established to
8 allow these companies to grow, to be able to compete. And basically, at what point do you let
9 these companies basically milk the cow? You know, I said it's probably 10 years, 15 years, 20
10 years -- whatever the amount is. But at that point, I guess they should be able ... The same
11 process that is used for 8(a) companies that's supposed to be there for nine years, I would
12 suggest that you should recommend something that once they exceed that amount of employees
13 or revenue, that basically, there should be a move-out to another level of competitiveness. Okay,
14 thank you.

15

16 Gary Jackson: Mr. Martinez, thank you. First of all, I'm happy to see that our numbers
17 are up in the small business database. You really hit on a key question of size standard. When
18 business is no longer disadvantaged because of its size, what factors would you look at and what
19 do you think is the most important factor that separate companies that are small or disadvantaged
20 based on their size versus those that are now competitive in the mainstream economy.

21

22 Ulises Vidal Martinez: I tell you, I cannot speak for about other companies, but I can tell
23 you about my experience. Originally, the first 10-15 years we not aware of the resources

1 available to small businesses. We didn't understand the importance of teaming agreements.
2 Basically, we didn't understand the importance of going out there and talking to contracting
3 officers. Basically, I feel that once the company understands this process, once those companies
4 reach the level that they can actually compete with -- using the knowledge and the standards, I
5 think at that point, many of the companies should be given X-amount of time to basically move
6 up to the next size standard. How long will that be? I don't know. Five years? Ten years? But
7 what I'm trying to say is we been in business for about I would say five years now, and we are
8 implementing the best practices such as our methodologies and processes such as ISLN and
9 Towson, DMMI's and it's really making a little change in our organization overall. It's allowing
10 us to, not only to compete with companies such as basically CDWG, GPSI, and some of the
11 other large companies. But at the same time, it's given us the ability to work as a -- basically just
12 compete.

13
14 Gary Jackson: Just for our records, what size company are you or the company you
15 represent?

16
17 Ulises Vidal Martinez: We are -- we have less than 25 employees, and we make less than
18 \$2 million.

19
20 John Kline: Thank you. The next speaker will be Johnny Brooks. Okay. Vincent
21 Perry.

1 Johnny Brooks: I don't hardly know how to begin here. My company is located in Largo,
2 Maryland. We are – oh, I'm sorry. I'm Johnny Brooks and I'm Managing Director of Brooks &
3 Associates. We are a Certified Public Accounting and a Management Consulting firm in Largo,
4 Maryland and we've been in business actively pursuing Federal contracts for about two years;
5 and I'm listening to a lot of the testimony this morning and being an accountant, I guess if you
6 force me to lean one way or the other, revenue versus consultant, it seems logical and it seems
7 easy and simplified to lean toward the revenue side of the equation. However, at this point in our
8 existence, I don't have strong convictions one way or the other. My convictions leans more
9 towards – we're 8(a) and to grow in a business, to me, in your decision in whatever decisions
10 you make at the level of this testimony, some consideration should be given to companies that
11 are technically a small business, but within your definition of a small business, there is a micro
12 or tiny business. We have a lot of expertise in the Federal sector providing accounting and
13 management support, but it's been extremely hard to grow with this because we get thrown in
14 with everybody else that's a small business and even though we have a lot of expertise and we do
15 have a lot of subcontracts, it is extremely difficult to compete against ... You know, when our
16 annual revenue is about \$500,000, about a half a million dollars, we have to compete against
17 other so-called small businesses that are \$4 million or 50 employees. So I guess my whole point
18 is, hopefully you will find some way to make some type of consideration or set asides for
19 companies that are micro or tiny for lack of a better way of putting it. What we've done recently
20 is, and maybe you can give it some thought, is in the procurement process in the Federal
21 government you guys are aware there are there's a simplified acquisition. Okay, a simplified
22 acquisition where there can be sole source awards up to \$100,000. I've worked on enough
23 engagements as a subcontractor to know that a lot of contracts that ultimately go to say \$5

1 million or \$2 million start off as \$50,000 or something a lot less than what it currently is. So
2 what we're doing now is going out and speaking to a lot of the Federal agencies saying, look,
3 we're confident that if you give us a chance on a simplified acquisition, that you will like us.
4 And a lot of you in here may not know that the Federal government is under a lot of scrutiny in
5 proving its financial management and there was – a lot of law has been passed. Financial Officer
6 Act of 1990. The Government Management Performance Act of 1994 requires Federal agencies
7 as well as the Federal government as a whole to have audited financial statements. They're not
8 doing a good job at that. And so what we're doing is, we're utilizing that knowledge to go out
9 and say, on a simplified acquisition, we have about 15 different services that we can do to make
10 you more audit-ready. So I guess to wind of my conversation and to appeal to you is to make
11 some type of consideration, even though we're 8(a). You can say, "Well, Johnny Brooks you're
12 an 8(a); that's enough." All 8(a) firms are not created equal. Some of them have been in
13 business... We have a nine-year existence as an 8(a) and it's much easier for an 8(a) firm that's
14 been in existence for six years to be competitively more advantaged than a firm like me. I go all
15 over country teaching accounting. I'm very good at it. I'm the Managing Director of the
16 company and what we do to distinguish our self from a lot of other small companies is it's very
17 hard to recruit people who understand the audit and financial environment in the Federal
18 government. So since I'm a teacher, I try to recruit them and train them. But dealing with that it
19 is extremely difficult to compete against larger small businesses and other 8(a) firms that have
20 been in existence a long time, even though we get extremely high ratings from our past
21 performance. So just to summarize my thoughts and my appeal is that if you can find a way to
22 make additional set asides for lack of a better word, tiny or micro businesses.

23

1 John Kline: Thank you very much. Our next speaker is Vincent Perry. Okay. Eileen
2 Straughan. Shirley Black. Tim Foreman.

3
4 Tim Foreman: Good morning. My name is Tim Foreman. I'm here representing Mr.
5 Frank Ramos from the Department of Defense, Office of Small and Disadvantage Business
6 Utilization, Office of the Secretary of Defense. Mr. Ramos, unfortunately, cannot be here today.
7 He's at an off-site with the new Undersecretary and he asked me to read his statement, so I have
8 that here. It is as follows: The Department of Defense appreciates the opportunity to share with
9 you our views regarding the Small Business Administration's efforts to simplify, streamline and
10 improve the small business size standards. The Department of Defense has a profound interest in
11 this complex subject matter. It plays a vital role in maintaining a robust defense industrial base
12 capable of supporting the Department of Defense transformation agenda. These, indeed are
13 important issues and we appreciate your interest in holding these hearings. As you know, the
14 Department of Defense is the largest Federal procurement office. Last year, over 80% of Federal
15 contracting happened within the Department of Defense. As acquisition professionals, our duty
16 to support the war fighter is delicately balanced with our fiduciary responsibility with the
17 taxpayer. As such, you must ensure that the NAIS, that is the North American Industry
18 Classification System and their associated small business size standards support the community
19 by providing a progressive core environment that fosters the maturation of small businesses into
20 competitive firms, able to pursue larger and more complex contracts. The ongoing war against
21 global terrorism has made the U.S. military transformation efforts an imperative goal. However,
22 the aftermath of the deployment offenses industrial consolidation and the government's right
23 sizing the remaining large prime contractors have now taken on the role of lead integrators in

1 systems managers, roles previously performed by government employees. Increasingly, DOD
2 has turned to the small business community to satisfy its demand for technological innovation.
3 We therefore must preserve our strong ties with the small business community to ensure that the
4 Department of Defense maintains its technological edge. As such, our concerns and
5 recommendations are as follows. We recommend that the size standards in select DOD industry
6 sectors be raised. We are concerned that the NAIS, and the size standards in the primary DOD
7 industries – and they are, aerospace, aircraft, ship building, information, robotics, COS materials,
8 are both obsolete and generic for the Department of Defense's use. Our analysis of empirical
9 suggest that many small businesses may be precluded from any – either as prime or as
10 subcontractors because of size standards assigned in pertinent industry sectors have not kept pace
11 with economic quote.

12
13 John Kline: I hope – hope he's decided that they're – that's the contract basis.

14
15 Tim Foreman: Actually, we're hearing from large business concerns that things are
16 happening at second and third tiers because the quote and the complexities of the programs that
17 we are purchasing such as the strike fighter. I mean traditionally, those major programs we had
18 more participation at first tier subcontractor level. Because firms like Lockheed and Boeing are
19 basically just systems integrators bring together the major players -- 99% of the dollars line-up of
20 large businesses of that first tier. The very complex system – and is not getting simpler and our
21 procurement rules, as you know, are changing, and we're growing significantly in terms of
22 average cost per contract and the types of things that we're buying. By removing these
23 restrictions imposed by our data thresholds, DOD can more readily take advantage of small

1 business commercial technologies and markets to meet its defense needs. We recommend that
2 an economist from both the SBA and the Department of Defense conduct a joint analysis of the
3 NAIS Code and associated size standards to ensure that they reflect the current marketplace and
4 economy. We feel that such review of the size standards is long overdue and past reviews have
5 not taken into account the unique supplier base that supports the Department of Defense's
6 mission. We further believe that an analysis should be an ongoing process rather than periodic to
7 ensure that small business firms are capable and have the capacity to compete. We strongly urge
8 the SBA to consider reducing the number of small business size standards and to streamline the
9 process for application; so as to mitigate the potential negative impact of this restructuring, we
10 recommend a three- to five-year grandfathering for small business concerns effected during this
11 time so that they cannot be afforded and accorded the full benefits of being a small business for
12 that period.

13 4. As a joint venture in teaming arrangements are methods used by small businesses to achieve a
14 broader contracting base, yet in accordance with current regulations the ____ in the first impact
15 small businesses size status as a firm and we're looking at some of the other issues. We
16 recommend that the regulations for joint ventures and teaming be reviewed to avoid a decrease in
17 the number of qualified small businesses able to do business with the Department of Defense.
18 That concludes the statement and I'm ready to take questions.

19
20 John Kline: You said that the – you recommended the number of size standards
21 subsequently decreased.

1 Tim Foreman: Now there's a couple of reasons for that. One of the things that we have
2 found and being in the government for 33 years, that many times contracting officers can
3 selectively take a contract and by putting the right NAIS Code on it or the wrong, and then they
4 look at it, can either preclude small business from participating as a set aside or include certain –
5 so it fits small businesses. So the more size standards, the more different size standards, the
6 more games people can play.

7
8 John Kline: So is it more important just because they're similar this receipt hopefully
9 demanded that that small business receipts important and never does fail, you think?

10

11 Tim Foreman: I think they both have a play. The more and varied size standards they
12 have, the more opportunities for games you can play and the more opportunities there are for
13 small business to be both a large and a small business, depending on the industry they're in. By
14 reducing they reduce that number. Currently, they are very small percentage that fall into both
15 camps. So any reduction would reduce that. So, there's that play.

16

17 Gary Jackson: For the previous person that testified I want your -- provides a chart that
18 shows in our staff-based database thousands and thousands of other small companies and in
19 terms of indicating needs for higher size standards preclude the – aren't you precluding the
20 opportunity for other companies to keep their high bids down? How does DOD differ from other
21 agencies or how are these thousands of other entities not viable to follow DOD?

22

1 Tim Foreman: There is a certain what we call critical mass that happens in certain
2 technologies such as composite materials even mapping where a business firm is required
3 nowadays to have aircraft, at least needs an aircraft. A significant cost, step-cost occurs in
4 manufacturing the need as you know, and when we reach a certain level -- we're a unique buyer.
5 We're not somebody running out for a gallon of milk here and there. We literally buy it by -- in
6 the metric tons, we'll buy it by. In terms of composite materials, things you use and carry a lot
7 of it, etc., a lot of these industries and we're going to have the capacity and capability the need to
8 be able to be at a higher level. We're not saying exactly what the level is, that's why we
9 recommended an economist from DOD along with an economist from the organization or to
10 identify these and it's not all industries; it's not all makes. But I think there are some that we
11 should identify because right now we have very few opportunities for small businesses at the
12 prime and even at the sublevel. Thank you.

13
14 John Kline: Thank you. Our next speaker will be Angela Moody. Okay. Tom Frana.

15
16 Tom Frana: Good morning and thank you for the opportunity to address the hearing
17 this morning. My name is Tom Frana (F-R-A-N-A), representing ViON Corporation. We're a
18 veteran-owned small business in the information technology segment of the Federal government
19 market place. I'd like to address three areas of the proposal. First, we would propose an
20 employee-based versus a receipt-based system. For a very simple head count --

21
22 John Kline: Is that across the board or your industry set-up?

1 Tom Frana: Our industry. The simple head count structure. Most small businesses
2 hire and retain employees for the long-term. So as looking at a head count structure, you can
3 plan years in advance as to how you want to grow your business. Second area is how do you
4 count those employees. We believe a small business should be capped at 150 employees. Those
5 employees would be a combination of your full-time employees and part-time employees, but
6 excluded would be temporary employees. If your front desk telephone operator happens to call
7 in sick and you have to hire a temporary for the day to cover your front desk, probably shouldn't
8 go against your employee head count for the year. The third area I'd like to address and
9 probably the more difficult of the issues at hand, is grandfathering. Whether you're a small
10 business and you grow up or you're a small business and you're purchased by a larger business,
11 there has to be some period of time that allows that company to melt or mesh either as a large
12 business or into a larger business. Departments and agencies of the Federal government spent
13 incredible amount of times doing acquisitions and creating GSA schedule books. If upon
14 graduation, if upon being bought, or you decide that all of a sudden you want to become a big
15 business, those contracts avoided you're going to create havoc within the Federal government
16 system. The time period the Defense Department recommends a three-year grandfathering, that
17 would be one answer. Our answer would be contracts are usually awarded either by, or by dollar
18 amount, or by both. So the initial contract awarded period or dollar volume should be left
19 standing, but no additional time periods or dollar amounts should be extended to that contract.

20
21 John Kline: Do you go after -- Is that what you're saying --

1 Tom Frana: The lot. Likewise, if you're a schedule holder and you're under a BPA
2 contract, when your schedule comes up for renewal, that should be checked against whether you
3 still match the small business requirements of the GSA schedule. That could be done on the old
4 periods, which are a five-year basis or it could be done on a yearly basis. I'm sure the folks over
5 at the GSA schedule would prefer that be on renewal basis and not add to their workload on a
6 yearly basis. Those were my prepared comments; I'd like to make one other comment because
7 we had somebody eloquently speak about small businesses that stay small businesses. There's a
8 lot of entrepreneurs in the world who own small businesses and drive small businesses and like
9 being a small business and have no desire to grow up to become a big business; and I hazard to
10 guess when you talk about amount of companies registered today under the Small Business
11 Administration under 100 employees, a lot of those owners, a lot of those CEO's like being a
12 small business, and have no desire to become a large business and have to somehow figure out
13 how that matches with what the SBA has as they left us to do. Thank you very much for your
14 time.

15
16 Gary Jackson: Just one question. Again, in the use of having the number of employees
17 as a standard, especially for a service like actually to be service like and to carry on how these
18 and the ability seems to be in the show which to live and there's a protest on the company size or
19 check the company size Federal standards that a whole system's in place or in fact, a requirement
20 that companies that are currently under the receipt-based that try to change their system to be
21 able to comply with.

1 Tom Frana: I can answer the first part of your question. I cannot answer the second
2 part of your question. From a size standpoint, we track that day in, day out; and we have the
3 systems in place to do that and they are not punitive in nature to manage that. Since we do not
4 track on the receipts side, I can't answer the second part of your question.

5
6 John Kline: Thank you. We'll have one more speaker before we take a quick break.
7 Bill Johnson. How about D.M. Williams.

8
9 Mack Williams: My name is Mack Williams (W-I-L-L-I-A-M-S). I'm the President and
10 CEO of a company called BAI. BAI was started in January '99. We're a small disadvantaged
11 business, an 8(a) program participant and a service disabled veteran-owned company. Almost all
12 of our business involves providing professional services to the Federal government and my kind
13 comments you need to evaluate in that context. Currently we have about 85 employees and I'm
14 proud to say that we've been recognized to one of Virginia's fantastic 50 fastest growing
15 companies for the last two years. I applaud the efforts of Small Business Administration to try to
16 simply the size standards. I would ask, however, to simplify them for whom. Simplifying the
17 regulations for the government to administer does me absolutely no good, if in the process of
18 doing that you exclude me, I'm now eligible for any size standard that exists. I'm at -- we're
19 under \$6 million average on the last three years. The regulations that you would propose would
20 you exclude me from almost all of the size standards except IT, which is only about 30% of my
21 work. As a small business --

22
23 John Kline: Why is that? The employees?

1
2 Mack Williams: Yes. You were unimposing employee size standard of 50 people. I've
3 exceeded that size standard for the last three years. But revenue, if you talking about a \$6
4 million size standard that I just haven't contracted, I'll talk about later. Procurement we were out
5 pursued that we looked at and we were – we just were barely been at the \$6 million size standard
6 plus three years ago. I got a return too under \$4 million of revenue. I know these numbers. I
7 mean you're looking at how people would implement this and the numbers to you are small, but
8 to me, they're very, very important; and every hour that an employee of mine spends trying to
9 comply with a Government regulation dealing with size standard from my perspective, is a
10 wasted hour. It has no direct support to a customer. It generates no revenue for me. It increases
11 my cost. It's going to increase the cost to the Government and it provides no value. If it doesn't
12 increase my cost, if my cost stays the same, then diverting those dollars to looking at size
13 standards is draining money that I would pay in bonuses to my employees. Again I recognize,
14 the numbers are small, but for a small business they are very important. I'm a strong advocate of
15 receipt-based size standard and I adamantly oppose the employee-based size standard. When
16 they were proposed, for a number of reasons I didn't think there was much correlation between
17 the dollar values on the receipt-standards and I mean I didn't understand the methodology that
18 was used that would get to 50 employees to \$10 million; because to me I would be paying an
19 employee \$200,000 a year on average to get to that size standard. I am an advocate of receipt-
20 based size standards for a number of reasons. First, they're very simple. We looked a contract
21 recently and all it required us to do, it took less than 30 minutes for me to go look at the
22 Regulations, see what was required. I pulled out my last three years tax returns, looked at line
23 1a, averaged those numbers, and said, "We're eligible and we meet this size standard." If I had

1 been looking at an employee-based size standard, I would have had to go back – and we do a bi-
2 weekly payroll and it shows the number of employees. I mean they're listed and there's a
3 number there, but somebody would have had to take an hour or two to go back 26 payrolls and
4 calculate that. I'm asking myself, with a receipt-based size standard, how much simpler can it be
5 if I can do it that easily. The second thing I'd point out, the receipt-based size standard rely now
6 on records that already exist. We're required to file a tax return. The information is there. It
7 does not require us to produce another record as employee-based size standard does. Again, if I
8 had to look at this, a receipt-based size standard must be done only once a year, the employee-
9 based size standards are going to have to be done every time we look at a computer. The last
10 thing I would point out is, the receipt-based size standard is a number that is readily
11 ascertainable. The employee-based size standard particularly if the SBA looks at some concept
12 dealing with FTE's is going to punish me very badly. I said when we print out a payroll, I've got
13 the number of employees and somebody can do that. The part-time employees that I have, and I
14 have a significant number of them because I have a lot of people who spent a long time in
15 government, who still have valuable service to give to the government, but they don't want to
16 work full-time. Today they want to be on the golf course; and if I don't have a requirement,
17 that's fine with me. But if I have to go and look through my payroll and the part-time employees
18 are coded in my payroll, so I can easily identify who they are, but I have to go and extract that
19 data and determine whether they've worked enough hours in total to equate to how many FTE's.
20 It's an onerous burden that as a small business, I would say I don't need. You asked for
21 comments about a mentor protégé program. I told you we had looked at a solicitation earlier that
22 had a \$6 million size standard. The solicitation over five years would have produced a revenue
23 stream of \$125 million to \$140 million if an 8(a) limited competition. You can't find an 8(a)

1 company that can do that kind of work. Other large companies had gotten a protégé so that they
2 were going to be able to do much more than 51% of the work. Partner that we were talking to
3 would not talk to us unless we were willing to become a protégé, which we weren't. But, I point
4 that out because it may be an indication that people who are led that large businesses may use
5 that and abuse it. There might be some basis for it, because this contract that we were looking at
6 – all of them were that way. You requested comments about government regulations that closed
7 from the size standards. I don't want to comment about a government regulation, but I do want
8 to comment about a contract. Because of our size, we bid frequently on larger contracts with
9 contingent hiring ranges. When we have done that, we've been punished by the government,
10 scoring our proposals down in a small business limited competition because we had contingent
11 hiring range. Small businesses cannot afford to carry employees to grow to a larger contract. I
12 want to make two comments, if I may, about things that have been said earlier.

13
14 John Kline: Hurry, your time is about up.

15
16 Mark Williams: Ms. Kasoff started by talking about net income and was asked how she
17 would do that. If you're talking about several contracting then I suggest you exclude ODC
18 (Other Direct Costs) buying paper, plane tickets and stuff may create jobs everywhere else, but
19 they don't do anything to grow my business. Mr. Frana talked about reviewing size standards
20 when extra cautions were being exercised. I don't have any objection if you're doing that and
21 there has been an acquisition of a company. But if I bid on a contract, as a small business, and
22 am awarded the contract and it has four options I'd hate to see the Small Business
23 Administration have policy that would require each time there's an option exercised that we'd

1 still be required to the extent that you can't do business planning that way. Thank you very
2 much. I appreciate the opportunity.

3
4 John Kline: Okay, thank you. We're going to take a quick break, about five or ten
5 minutes. We'll start again about ten to 11.

6
7 *[10:40 a.m. BREAK]*

8
9 *[RESUME -- 10:50 a.m.]*

10
11 John Kline: Our next speaker will be Stephen Ryan

12
13 Stephen Ryan: Good morning. My name is Steve Ryan (R-Y-A-N). I'm a partner with
14 the government group of – government contract's lawyers and Matt Walker, we're a California
15 based law firm. I'm appearing for one of my clients today, Operation Hope, which is a
16 significant partner now with SBA in mentoring small businesses. We have six centers across
17 America, Los Angeles, Oakland, Chicago, Washington as examples of the cities that we're in
18 and we were very, very pleased that the Administrator of the SBA thought it important enough as
19 partner of us to be present at the opening of our Washington center on May 4th. We are
20 traditionally bringing African-American businesses into existence and helping people with
21 financial literacy in those areas. I speak with about 25 years of experience; about half in
22 government and half out of it. I was general counsel in Government Affairs for many years,
23 wrote such laws for the Senators as Prompt Payment Act, Fair and Integrity Act. I bleed small

1 business and I have really enjoyed representing and helping businesses grow. We really are
2 concerned about the upward portion of the area of size standards. We believe that in order to be
3 a success as a small business and contribute to defense base and to be very sophisticated
4 commercial agencies, that the size standards generally have to be as high as possible, and not as
5 low as possible. And generally, we believe that it is equally important that when a company
6 graduates – which is a wonderful thing -- when we successfully graduate an African-American
7 company from the 8(a) program or as a small business, that they be allowed to at least keep the
8 contracts that they have and run those out. So, I'd like to address grandfathering issue for a
9 moment. I think that I'd like to align myself with Mr. Franas' remarks, but I want to be even
10 more focused on the fact that we as an SBA community serve the government customer; that it is
11 our government customer that validates us by buying our goods and services. And, it seems to
12 me very important to the procurement system not to destabilize it by cutting people prematurely
13 when they have existing option years or when they have an existing run outs. And I think the
14 worry that we would be taking people too far into the future is really not a serious one in a world
15 of the Anti-Deficiency Act. When you have an Anti-Deficiency Act that emphasizes shorter
16 contracting periods and option years, I think agency's remain very much in control of whether
17 they will choose the option of continuing, but I think that that option should be allowed to
18 agencies. So, we believe -- I represented, for example, an African-American business that grew
19 up to
20 successfully control the Marshall Space Flight Center Operations in the Kennedy Space Center.

21
22 John Kline: In terms of the option, do you feel that way regardless of whether or not
23 proposed by self-vote or acquired or how do you feel about that?

1
2 Stephen Ryan: I think that's a difficult issue. Let me stick with the one that I believe
3 most strongly and I think is absolutely the clearest. That is, if you're not acquired, if you've
4 grown through the stench of your own sweat and blood, built that kind of company, then I think
5 you ought to be able to keep your contract. You can put an outward limit on that of five years
6 and you know, most agencies are not contracting for more than one, or two or three years or for a
7 dollar amount. So I think that's the easiest example. I think the acquisition one – I don't know
8 the answer to that. I think that's a more difficult area and I would urge the SBA actually to
9 divorce the two. I think that the policy issues for acquisitions are fundamentally different than
10 the ones where you just simply you grow out of it. Let me – I want to just reflect one, this
11 African-American business that I represented where we were so successful that we were chosen
12 to be go-go contractor, running one of the four space flight centers. Let me tell you something.
13 As soon as we graduated we got dumped. NASA dumped us. And the reason they did is
14 because they needed to fulfill their quota of small disadvantaged business and they chose another
15 company. And I think we have to be careful at SBA thinking about how the agencies are going
16 to fulfill their duties in the future. There is some mechanical aspects to this out there, and I think
17 the SBA size standards have to remain as open to getting the people to a robust place where they
18 can live on their own, as you can. So I think that's why we feel that the grandfather issue is
19 important whether you are a small business that is growing or a small business that's bunking up
20 against those limits. We should be dumping to make it harder for people to graduate. We should
21 provide no disincentives. That's really the core of my statement and I really congratulate you on
22 having field hearings under the Administrative Procedure Act. The SBA, at this point in time,

1 has never had a higher value or been thought of more highly in American society; and that's
2 great. It's such an important thing. Thank you very much.

3
4 John Kline: Thank you. The next speaker is Henry Wilfong.

5
6 Henry Wilfong: My name is Henry Wilfong (W-I-L-F-O-N-G). I'm President of the
7 National Association of Small Disadvantaged Businesses. We're about 300 strong; 300 firm
8 strong. Everything from janitors to rocket scientists. Our science 5 people to 1700. And our
9 customers, the aerospace defense industry. Gary, I've got one copy of this. I've got this for you,
10 for the record, but I'm like one of the other gentlemen. I've just changed my whole delivery
11 based upon five minutes of circumstances that have come before us -- some things that I've
12 heard. My basic theme is small has got to be larger than it used to be. I go all the way back to
13 when we first invented the five capitals of program, the minority business program, those things
14 that went into Public Law 95507, etc. and small has got to be larger than it used to be. I don't
15 know what that is, Gary, but you guys figure it out. We can figure it out. We can depict the
16 CPA's, the economists and others to figure out what size is proper, but as I sit here and here our
17 customer, DOD, tell you what they've already told us, that you guys have got to be larger than
18 you are. You got to have more size, you got to have more heft, in order to handle the kind of
19 things we want to have. So I just ... One even said to me, small has got to be larger than it used
20 to be when I've made my small just a target. Small has got to be larger than it used to be.
21 Someone has suggested that we ought to get out of here. The small businesses ought to get out
22 of that arena. I don't know where the hell we're going to' go. I'd love to go somewhere, but
23 where? And how do I go. Gary asked a question about -- of one of the ladies about what factors

ought to be used in determining disadvantage. That's very simple to me. You have a form that 8(a)'s fill out when they come into the program, stating 1,2,3,4,5,6,7,8,9,10 – those things that make them disadvantaged. When they disappear, then they are ready to go. The key is Public Law 95507 talks about promoting the competitive viability of firms owned by social and economically disadvantaged individuals through the provision of contractual financial and technical assistance as may be necessary. Now I took that to mean, when we have done that job at SBA these people get out of here and go on. So where do they go? Where do they go? They go on to the next stage. I don't know where that is. I know there is a teeny weenie bunch, there's a humongous bunch and there's betweeners. People in between those two. One of the brother's of CPA talk. I'm a CPA. I don't practice any more, but the size standard for CPA's is \$7 million. A good buddy over at Deloitte, Touche told me they did about \$5 billion last year. Mr. Loto, how does \$7 million compete with \$5 billion. No way. And I know that that's reach, that they're not intending for us to compete against Deloitte, Touche; but \$7 million just ain't enough for a CPA firm. I mainly came here to submit this, but I basically came to incite you a little bit, if I could, to interest you a little bit if I could, and to respond to any questions you might have. About basketball? Football? [laughter]

John Kline: Well, one of the things you said was that size standards need to be higher across the board so that we can use your businesses. What we also heard from other businesses saying that the only reason they want to do that is because DOD wants to take half of the credit by giving money to large businesses. How do you respond to that?

1 Henry Wilfong: I don't agree with them. In the first place John, I see what it is. DOD
2 wants that, DOD is going to get that. So I, as a contractor, that represent contracts, whether I'm
3 satisfied, I try to satisfy our customers. The point that one of them made, I don't want to get in
4 an argument with people who are representing, but there are reasons for have discerning factors.
5 There are reasons for having size, for having heft, for having differences; and the best way I do is
6 with the things I'm comfortable with. I'm a CPA. Unless you're a CPA, we ought to figure that
7 if Gary wants to hire CPA, he hire's me rather than you. If you want to be in the competition,
8 you become a CPA, like I am and then Gary can hire you. That may not be a good analogy, but
9 John, I just don't see that. I see that what's happened already is that DOD has decided that small
10 has to be larger than it used to be or you guys got to get out of here. We're going to deal – do
11 business with somebody else. And we don't want them to stop doing business with us.

12

13 Gary Jackson: A similar question to what John asked, but with a different twist. That as
14 DOD is looking for larger small businesses, any change that would address that kind of concern,
15 aren't we also dangerously impacting the much smaller businesses, those with 25, 30, 50 or 100?
16 Don't you prevent some opportunities to those companies from otherwise bidding.

17

18 Henry Wilfong: You probably are, Gary. But in California, I'm licensed as a CPA. Now
19 that means that somebody that's not licensed as a CPA cannot give an opinion on financial
20 statements. Is that discriminating against them? I don't know. I guess so. But in terms of ...
21 Let's try that – separate that from the personal too. Yes, its going to negatively affect some
22 businesses, yes. But I guess the point is that I'm look at, do we now drag somebody down
23 because we want them to be equal to us down here, or do we climb up to reach where there are,

1 and then gain parity and equity, that way? I'd gather the climb up, rather than pull down. But
2 the key now, Gary, got to get back to it, I'm going to' hammer you with this, whether you and I
3 dislike it or not, that's what DOD is already saying. DOD – Transportation, Energy, all of them
4 are telling us that. So we can wish as we want to wish, but they've already told us what it is.

5
6 John Kline: They -- in their ideal world they like to give small business credit, give
7 contracts throughout IBM, etc. so that's not going to help the little man, either, though.

8
9 Henry Wilfong: John, what I think you ought to do is get away from that. 95507 talks
10 about maximum practicable utilization. It didn't set a figure. It didn't set a percentage. What is
11 the figure they would have? What is the goal? Some would say it's 23%. That's not true.
12 Maximum practicable utilization may be 40%. So, if they use a big business to do something ...
13 Hey man, sister comes along, she's got a business that's qualified to do something for them,
14 they're supposed to use her. Not to say that we are identical with Boeing, Lockheed Martin or
15 Leutrell Osborne -- with them. We didn't give a contract to that sister; we're in violation if she's
16 ready, willing and able.

17
18 John Kline: Thank you. Next speaker, Michael Shelly.

19
20 Michael Shelly: I'm Michael Shelly (S-H-E-L-L-Y). Owner of Navaid Services, a two-
21 year old small business specializing in the installation of navigational aids for the FAA. I'm
22 here, representing myself, speaking specifically against dropping revenue as a criteria and using
23 the employee levels that you've chosen as the defining set point for small business. I've waded

1 through your proposals to simplify the definitions, I've also waded through the Small Business
2 Act; let's say 23%, by the way. In your desire to simplify, you've seemed to have lost sight of
3 your mission. The front page of the Small Business Act says, "It is the declared policy of the
4 Congress that the Government should aid, counsel, assist and protect insofar as possible, the
5 interests of small business concerns in order to preserve re-competitive enterprise policy of
6 Congress." It doesn't matter DOD; it doesn't matter DOT. These are the people. I have a
7 seven year-old nephew, William. He's a large boy. Head and shoulders above his peers. I have
8 a seven year-old grandson, Matt. He's a small boy. Head and shoulders below his peers. Years
9 ago I coached Pop Warner football. We had a system using a combination of age and weight to
10 protect our players. It keeps Matt from having to play against William. They're both 7, but they
11 both don't belong on the same playing field. If we use your system as proposed to run football in
12 this country, we'd basically have the NFL and everybody else. You'd have
13 Pop Warner players on the field with high school players on the field with college players.
14 Certainly, simpler, but not much protection for the Pop Warner players. Okay, now right now
15 you should be saying, Michael, gross over simplification. Let me give you some figures that I
16 hope as you go on through this process, you remember these words and these points; speaking
17 only of my NAICS jet force specialty contractor. You would remove revenue as a criteria and
18 set the employee number at 100. Based on the 2002 U.S. Census Bureau economic census,
19 over 96% of all the establishments across all 20 subcategories would now qualify as small
20 businesses. In 15 of the subcategories, over 98% of all establishments would qualify as small
21 businesses. In 9 of the 20, over 99% of all establishments would qualify as a small business.
22 Now I'm not sure how you settle on the figures in your criteria. I do know the U.S Census
23 figures show 98,2% of U.S. businesses have less than 100 employees and 97.5% of U.S.

1 businesses have revenues of less than \$10 million. But you're using the wrong numbers. The
2 Federal Reserve Board's Division of Research and Statistics in a report prepared for the April,
3 2001 Federal Reserve Bulletin showed over 83% of small business have less than 10 employees.
4 And over 85% of small businesses have sales of less than \$1 million. I mean now we all agree
5 its tough to be a small business. Statistics are against us. 48% of us are going to fail. We're not
6 going to make it. The Small Business Act says the government-wide goal for small business
7 participation shall be at least 23%. Okay? Congress carved out a nursery, an incubator, a safe
8 state where small businesses have the opportunity to develop and grow. This 77% left for the
9 folks that are small businesses. Your changes allow the high school and college player's angle
10 that incubator with us Pop Warner players. Remember it is the declared policy of Congress that
11 the government – that's you, the SBA, protect – counsel, assist and protect. These changes will
12 not do that. You know, they may simplify but simplify doesn't protect and simplification is not
13 your mission. [APPLAUSE] Thank you.

14
15 John Kline: Next speaker, George Anastasi.

16
17 George Anastasi: Good morning. My name is George Anastasi, spelled (A-N-A-S-T-A-S-I).
18 I represent Summer Consultants. We are a consulting engineering firm. Summer Consultants is
19 pleased to express our comments in this form regarding the proposed rule to restructure the small
20 business size standards. In general, we support the proposal to restructure the size standards
21 because it will create a fair rule for our sector, that is a substantial improvement over the existing
22 rule. Summer Consultants is a small business that falls under subsector 541 for professional
23 scientific and technical services; specifically, Code 5413304 Engineering Services. We are a

1 mechanical and electrical design firm that specializes in the renovation of federal and
2 institutional facilities. The majority of our work is contracting directly with government
3 agencies. The work that we do is typically available only through the way of small business set
4 asides. So therefore, we have developed an expertise in performing this type of work. Hence,
5 we have staffed our firm appropriately to provide the design services to our client. We've been a
6 small business for many years, operating under the existing annual receipt cap limitation of \$4
7 million established several years ago. For the past few years, we have operated our business near
8 the receipt cap limit. This has created a situation where we've had to consider reducing our staff
9 levels to stay within the current cap limitation, due to increases of wages of our staff. Our
10 productive efficiency has therefore been threatened by wage inflation. In regards to approaches
11 by which to simplify the size standard the proposed rule based upon the number of employees
12 appear to be a simple approach that will match the index itself against wage and inflation which
13 is our primary concern. We do not believe that the proposed rule is difficult to understand. We
14 believe that businesses will adjust themselves accordingly to the finalized employee calculation
15 method, we do not believe this will result in namely, a material burden in operating a small
16 business, at least in our sector. In regards to the use of receipts to measure business size, in our
17 industry qualification based selection in parallel with employee size standards appears to be
18 adequate and the simplest method that will naturally adjust itself for inflation. We are, however,
19 one of the 31 industries that would also be required to meet a receipts cap under the proposed
20 rule. We understand this rationale because of the amount of subcontracting of work in that factor
21 in our industry. The proposed receipts cap of \$7 million with a limit of 50 employees does
22 appear to be appropriate for our industry if the receipt cap is used. However, with each passing
23 year, we must consider reducing our staff to stay within the receipts cap limitation, unlike the

1 other industries not burdened with the government receipts cap. For the proposed rule to be fully
2 equitable for all industries, we believe that some measure to index the receipts cap for inflation
3 for the 31-industry burden with it should be considered. Again, we wish to commend the SBA
4 on the overall approach of the proposed rule. Thank you for your time and allowing us to
5 express our comments in this forum.

6
7 Gary Jackson: I've asked this question of other testifiers, but I think it's an important
8 point in using over employee standards service industry again do you find that you have systems
9 in place, accounting systems, payroll systems, database systems; now calculated full-time
10 employment or is not something that you may have to adjust or simply leave it as it was to
11 reduce --

12
13 George Anastasi: We feel that with our accounting system we'd easily be able to calculate
14 that number. We're a firm of 28 people. We're mostly full-time employees. We do hire some
15 temporaries, but we feel our system is easily capable of tracking that. Thank you.

16
17 John Kline: Dr. Richard Greene. Dr. Greene – no? Rusty Palmer. Nobody? Bruce
18 Exum.

19
20 Bruce Exum, Jr.: Good morning. My name is Bruce Exum (E-X-U-M), Jr.; I'm here today
21 representing Atlantic Marine Construction Company, Incorporated. We are an 8(a) firm,
22 incorporated in 1993 and certified under the SBA's 8(a) program in, I think, November of '99.
23 Employ approximately 46 employees full-time. Today I would like to comment on three of the

1 items proposed in your Notice. One of them is in support of maintaining the receipt-based
2 evaluation for small businesses. I do believe that they need to be updated. I know that you're in
3 the process of doing so. I commend that effort and support it. I think that some consideration to
4 restore procurement data, along with some current budget projections need to be factored in, in
5 order to establish trends, particularly in the federal procurement market. We're seeing contracts
6 grow, and grow, and grow. We have the capability of executing them in construction, which is a
7 unique perspective today. We do a lot of outsourcing; we do a lot of teaming; a lot of sub-
8 contracting. One of the biggest problems that we have in construction is capital within. If you
9 have capital you have bonding capacity; if you have bonding capacity, you're in. If you don't,
10 you're not. That's the simple way of putting it. If you cannot exhibit the ability to provide
11 bonding capacity then typically, a contracting officer that I approve or some kind of consideration
12 will be forced to do something different. The employee size as a sole base I would be
13 vehemently opposed to. I do think it needs to be considered. The number of employees is also a
14 factor. Large businesses in our industry can definitely leverage resources as an employee sizes
15 in order to create an advantage on contracts. I believe it should be maintained liberally. I don't
16 believe that the agency should do anything to deter any company from hiring people. I definitely
17 don't ever want to get in a position to where I'm looking at cutting people to maintain a
18 program's status. That's a tragedy. That should never happen. Agencies should liberally look at
19 that. If it's an average, a median, or some kind of factor to round up the next grouping level, in
20 my opinion, a company should that's running – many sizes I've heard today of 100, 150. I just
21 do simple math in my head. If you got a \$6 million tab and you got 150 employees, they're not
22 making a lot of money. That's not leaving a lot of money for the company to grow itself. And
23 also, to invest in whatever it is they want to invest in, to maintain growth. People in my industry

1 make more than \$35,000 a year in typical. The other issue I want to comment on is your
2 approach to joint ventures. We are very much in support of joint ventures in how the SBA and
3 government look at their status. As long as each of the entities can individually maintain their
4 status, if you have three 8(a) companies get together to go after a procurement and there is some
5 advantage to being a small business particularly for procurement in my industry, as long as each
6 one of those individuals can independently maintains the correct tiers, the SBA recognizes that
7 they're small businesses and their programs are their own, then the joint venture or the LLC or
8 the team, whatever it is, that they could go on and put together to chase this procurement should
9 be recognized as the same without impact. I don't believe there should be a limit on the number
10 of procurements that you should be able to go after – two or three a year. I think that becomes
11 complicated. I think that most of us, in my industry in particular, we're going to' chase
12 something that's got some terms to it – 2, 3, 4, 5 years to it. And if the agencies see that there's a
13 possibility that we're going to lose our program status, whether it be individually which then
14 would be as a joint venture, then they're going to be less apt to even consider doing that which is
15 going to take away dollars from small businesses. And that's happening today. That's
16 happening now. We're seeing it –I'm bidding on three of them right now. If we get them and
17 we end of graduating as a result of them because of size, what is my agency going to do? What
18 is my department going to' do. In my opinion, trying to maintain stability and minimize impact
19 to the client, is probably one of both yours and my biggest responsibilities. One of the key
20 issues in evaluating that as far as allowing joint ventures to be recognized as small businesses, if
21 each of the independent partners came in, is that they also conduct business themselves, away
22 from the joint venture. If they're independently conducting business as well as participating in
23 whatever this LLC or joint venture procured and now is executing, then that in itself should be

1 evidence enough to the agency of our ability to perform. In the event that we're totally
2 dependent on this joint venture, then I think there's some other issues that need to be considered.
3 With that, I want to reiterate, one of the big issues that we look at and that we hear is Federal
4 procurement administrators' reactions to sizes, where we're seeing a lot of procurements move
5 through small business set aside programs because of the caps on the sizes. I know you're on it
6 and definitely you'll receive some paperwork from us; and I hope that that comes through
7 quickly. Thank you.

8
9 John Kline: Thank you. The next speaker is Serena Chreky. No? Okay. Danny
10 Traham.

11
12 Danny Traham: Good afternoon. My name is Danny Traham and I'm representing C-Lo
13 Business Systems. I'm here to bring to your notice that my company has been in the business for
14 the past 17 years, and during those due diligence and like my colleague mentioned over here,
15 sweat and blood. That's what we've been doing for a while, serving the Federal government.
16 After 17 years, I'm still of the thought, "Am I in the right business? What am I doing here?"
17 The reason being that my business and my portend of business is office products and computers
18 and IT equipment; and wherever, whichever agency you pick up, larger contracts are being
19 awarded to large businesses. Staples, Office Depot, Corporate Express – it is not even a U.S.
20 based company. They're a German-based company if I'm not mistaken. That makes me think.
21 "What am I doing here?" Is this the right business. We graduate from 8(a) status today. As of
22 today, I will not be an 8(a) and I do not have any contracts in hand; and that makes me think;
23 again and again. We have DHHS schedule. But as far as the schedule is concerned, any large

1 business having the schedule can still be awarded the contract. A few months ago, there was a
2 contract awarded by DHHS to Staples. My company bid on it. Apparently, DHHS – I still have
3 the documents with me -- the part numbers given to us for bidding were the Staples and Office
4 Depot. How was that done? My company was abused by SBA and finally, the Form 70 was
5 withdrawn and Staples was awarded this contract. And there was no say; there was no other
6 contracts that I was working on. And, there was no small business participation on that. There is
7 no money ... Let's take another example, VA, had the biggest contract, which is only awarded
8 to four large companies. Even the micro-purchasers, which is under referrals, which is under
9 \$2,500 to \$100,000 should be given to a small business. That also is being done to large
10 businesses. I used to sell a lot of office products to VA, under \$2,500 threshold and maybe
11 more. But after that, SBA said, "No;" I can't sell any more office products to VA. They are the
12 micro purchasers. They are the flagellates. Who's monitoring them? The size standard in my
13 business – that the size standard of abyss that it's not even funny to be in business because all
14 these corporations are going to take away the contracts; being a small business they're legit. I
15 have no say. I'm telling you the bitter truth, but as the right thing. In my business, according to
16 my next code, the size standards should not be increased and it should not be under 75
17 employees. After 17 years, we are still under 10 employees and I'm feeling the crunch today.
18 My sales are dropping down. And as of today, I don't know whether it will be if I've achieved
19 my goals or received a profit; a little profit, even if I break even. There is no agency I called or
20 address. Whenever I call, so slow, we will order contract we have a bid here with USDA and I'll
21 see it. I flew down to Denver. They have a contract awarded to one of the large businesses.
22 USDA now see us over here. We are the ones who are jay walk compliant. As you know, size
23 standards distract some of the jaywalk organizations. My company is the one that is diligently

1 working to try to grow a jaywalk business, and that is the forfeit. But a jaywalk contract has
2 been awarded from USDA and RCS to a large company. How am I supposed to stay in
3 business? That is all I want to say. Thank you.

4
5 John Kline: Our next speaker will be Bernard Terrell. No? Alese Garnett. Shirley
6 Black. Angela Moody. Matt Collins. Bill Sylvester. Anthony Evans. Devindar Sareen.
7 Gregory Taylor. Eric Muran.

8
9 Eric Muran: Thank you. Good morning. My name is Eric Muran, and I'm a member
10 of American Small Business League. I've traveled 3000 miles today to talk for 5 minutes on this
11 issue, so I hope you can hear me in the back. Anyone who would like copies of the information
12 I'll be referring to today, I'll be happy to provide that after my testimony. Six government
13 investigations have found a significant portion of the awards the SBA has been reporting as
14 small business awards have actually gone to corporate giants. The current SBA proposal will
15 establish policies such as grandfathering that will allow the SBA to continue to report awards to
16 large businesses as small business awards for five more years. Another policy will allow awards
17 to firms own by venture capital companies to be reported as small business contracts. Now the
18 SBA's own office of advocacy found the SBA's reported contracts to corporate giants like
19 Raytheon, Northrup Grumman, Titan, Carlyle Group, General Dynamics, EDS, Arthur, Daniels
20 Midland, ITT Industries, Oracle, Hewlett Packard all as a small business. A GL investigation
21 found that the SBA has lifted the Nike Corporation, Verizon, AT&T, Sheraton Hotels, Office
22 Depot as a small business. Specifically, the SBA's reported \$98 million in contracts to Burman,
23 a Dutch firm with 18,000 employees worldwide as a small business. In 2002, GAO launched an

1 investigation based on the information provided by American Small Business League President
2 Lloyd Chapman. The GAO also found billions in small business contracts had been awarded to
3 large businesses. Now the SBA was forced to remove the names of over 600 firms that were – I
4 have in my hand, 600 of the nation’s largest firms were printed at their small business database.
5 The SBA’s own Inspector General recently issued Reports 514, 515 and 516 which I have a copy
6 of if anyone would like one; and I quote, “One of the most important challenges facing the SBA
7 and the entire Federal government today is that large businesses are receiving small business
8 awards.

9
10 John Kline: Are you saying that they are receiving prime contracts – currently? Is that
11 what you’re saying?

12
13 Eric Muran: There have been numerous reports, and I have a copy of that if you would
14 like that.

15
16 John Kline: I have copies of the reports. I’m asking you what is your understanding of
17 what’s going on? Are you saying that large businesses currently receive prime contracts of small
18 businesses? Is that what you’re saying?

19
20 Eric Muran: There are currently reports of large businesses being reported as small
21 businesses in prime contract awards. That’s correct.

1 John Kline: So the award itself – the award process itself is being awarded to large
2 businesses. That's your understanding?

3
4 Eric Muran: That's my understanding and I have information here backing that
5 statement and I'll be happy to share that with you.

6
7 John Kline: I don't know what basically you're talking about, but I find it very hard to
8 believe that all those companies you just mentioned, that every one of those received a small
9 business contract currently.

10
11 Eric Muran: Well it's in the report 514, 515 and 516. And in this hearing it says, "Of
12 all certifications found, the SBA awarded four of the six high-dollar procurements reported as
13 small business to large businesses, at the time of those procurement. It's in the report.

14
15 Gary Jackson: On that report I would like to make a comment and refer to the report that
16 those awards were made to companies that were initially small businesses at the time they
17 received the contract, but they grew larger and a lot of the reporting is more of an issue of how
18 the contract is reported after a contract is awarded to a small business not so much the issue of a
19 large business receiving a contract that was reserved for small businesses. Again, I think that
20 report does indicate in the initial contract, the company was small.

21
22 Eric Muran: Okay, Gary, based on that information, we'll regard that Raytheon,
23 Northrup Grumman, maybe at times were a small business, but that was over 30, 40 years ago. I

1 go on by saying, in my hand I have a proposal from the NFIB which is the National Federation
2 of Independent Businesses, that clearly state they are opposed to grandfathering. This is an
3 organization with over 600,000 members. The SBA tried to use a tier system --
4

5 John Kline: Wait, may I say one thing. We have no plan at all right now. We are -- as
6 I said when I first started the hearing, we had when the proposed ruling went out, we had 4500
7 comments received in response to that proposed rule and based on those comments, we pulled
8 the rule back and based on those comments we think that these are issues that were presented to
9 us by the comments, they are not issues sent -- people across the country wrote to us and said,
10 these are issues we are concerned about. So those issues you are now talking about are issues
11 that your small business owners recommended and want to view comments about them. So
12 surely, we'd love to hear what you've got to say about them, but please don't say that ... the
13 proposal.
14

15 Eric Muran: Fair enough. The proposed rules are in my hand; if anyone would like a
16 copy of that, I've got those comments, the 4,500 that they are referring to. The SBA's plan to
17 use a tier system for small business size standards to triple the current small business definition
18 for most government purchases from 500 employees to 1500 employees. Now according to the
19 U.S. Census Bureau, firms that have less than 20 employees across the United States make up
20 over 89% of small businesses and businesses in America. Now also, an average of
21 approximately 12 employees is what you'll find throughout the United States as considered a
22 small business. Now, a small business size standard of 1500 would be over 100 times larger than
23 an average company, American company. Now the SBA's plan to provide an exclusion permit

1 the affiliation for venture capital companies, those we're referring to today. This will allow large
2 banks, large investment firms and other large businesses to own and control small businesses
3 while the SBA can report those contracts to those firms as awards to small businesses. This is a
4 huge loophole. The new SBA proposal will divert billions of dollars in small business contracts
5 to big businesses. It will create new loopholes and allow the dramatic abuse exposed to GAO,
6 the CPI, the SBA Office of Advocacy and the SBA's Inspector General to continue. I say all that
7 to say this, let the facts speak for themselves. There are over 23 million American firms with
8 less than 100 employees that want the end to fabricated small business statistics. They want it
9 annual re-certification, they want 100 employee size standard for non-manufacturers, and they
10 want the SBA to immediately adopt all recommendations of the SBA's Inspector General, the
11 SBA's Inspector General to end fraud and misrepresentation of Federal small business
12 contracting. I have copies of all the reports that I mentioned in my testimony if anyone would
13 like copies of it.

14
15 John Kline: Okay; our next speaker will be –

16
17 Gary Jackson: I have a couple of questions of – first of all, you mentioned that within that
18 tiering proposal you don't have a tiering proposal considering a 1500 employee size standard, let
19 me dare to start mentioned in grandfathering positions ask for comments if a tiering approach is
20 something that has been considered further. The purpose of the hearing new testimony and
21 others is for us to consider that idea that may or may not need some specific proposal for us to
22 clarify but or advancing of that new specific proposal in it and any future actions would, in fact,
23 these specific proposals that we are getting additional comments on. I'd just like to get back to

1 the position of grandfathering. We've had other commenters present testimony saying that they
2 felt SBA should consider it and I'd like to put in context that reason that they ask for comments
3 on that particular issue. In our proposed rule of March of 2004, just as an example, we proposed
4 of using 50 employees for most industries that currently have a \$6 million size standard. A
5 company with \$6 million in revenue specifically and anywhere from 35 employees up to maybe
6 60 or 70, depending on how it does business, depending on if these are part-time employees and
7 so forth. Do you think that a position that if a company is small under \$6 million size standard,
8 does that bring the size to come back out of the employee standard of 50 employees that we
9 actually allow a limited period of adjustment or some believe that in \$6 million in standard in
10 size that have 55 employees that they could continue to be a small business?

11
12 Eric Muran: Certain requirements would entail that granted, you know, the contract
13 employees that's already going finish it out. A lot of the industries that are out there right now,
14 aerospace and IT, a lot of that can be fulfilled. Those dollar requirements, where it go to a dollar
15 requirement would be fulfilled, possibly even in a year. That \$6 million cap, because they are
16 dealing with a high commodity big dollar amounts. So as far as the size standards go, as
17 mentioned, finishing them out we are looking to possibly be interested in – but five years, I mean
18 that's – we're talking ... When it goes on for years after year after year, that's just too much.

19
20 John Kline: Well when do – to get to the question... The \$6 million firm who is now
21 55 employees, would you think in a year is too long or what you're saying is you want no
22 grandfathering at all for that?

1 Eric Muran: Yeah, no grandfathering at all.

2

3 John Kline: So that firm who was \$6 million ... we could say that the rule that that
4 could be we know for future contracts.

5

6 Eric Muran: Well, the exact amount of the grandfathering would take place and that's
7 up for hearsay because if someone has a contract that's ongoing and rather than hold the contract
8 -- what I'm saying thank you

9

10 John Kline: No, no, what I think the grandfathering -- continuing with coming back to
11 contracts is different from the grandfathering.

12

13 Eric Muran: My understanding with the issue is, that a \$6 million firm, a new size
14 standards come out with 50 employees, and they're in the process of making an offer they
15 haven't yet ... so, the rule comes out and it's explanatory will there be a limited time of the
16 timeframe for them to either come into compliance or be eligible to be considered for the work
17 until, you know, some ...timeframe.

18

19 John Kline: Yeah, that's what I'm saying, exactly. Thank you. Our next guest – out
20 next speaker, Stephen Denlinger.

21

22 Stephen Denlinger: Good morning. Steve Denlinger, President of LAMA, Latin American
23 Management Association. I'm also here representing the U.S. Hispanic Chamber of Commerce.

1 Thank you all very much for having us here. I know it's been a long day, so let me jump right in
2 and see if I can make my comments as brief as possible. First of all I want to commend you
3 Gary, here publicly for your fine performance as a public servant. You are really exemplary, you
4 are available, you are thoughtful, you are considerate, you reach out to us, you listen and
5 sometimes even what we have to say has an impact. Thanks. [APPLAUSE] The objective SBA
6 has is to – reform the size standards system to make it simpler and basic, and in doing so, to base
7 it on numbers of employees and to reduce the number of size categories – that is the heart and
8 soul of what you're talking about. Last year as we all know, of course is they endeavored to
9 reform the size standards and there were many objections to many of those provisions and SBA
10 wisely pulled back its proposal. The question is what could be the simplest way to reform size
11 standards without being overly complicated. One approach would be to leave it as it is based on
12 revenues for some industries and employees for other industries, and yet reduce the total number
13 of size standards from 37 down to some more manageable number – I don't know whether it can;
14 is the correct number that might be too few with respect to the depth and complexity of the
15 second system, but perhaps some number larger than 10 will make a good point. The last year,
16 Gary, and all the SBA folks associated with this, made the point over and over again. The effort
17 was to make the impact as neutral as possible with respect to impact on small businesses in
18 reforming the size standard system. Gary, as you know, we were quite alarmed in that meeting
19 where when you attended where when asked the question how many businesses would no longer
20 be small businesses as a result of the size standards reform that you were proposing. You
21 indicated at that time that some 64,000 companies would be adversely affected or would no
22 longer be a small business as a result of the size standard reform. Granted that was so fairly
23 early on and that number was later reduced to 34,000. But I think that sent a shock wave

1 throughout the community that, "Wow, this is really much more significant than we thought."
2 The flip side of that, or the how shall I say, the conjoined side of that was that those companies
3 would have been instantly ineligible for any further participation in small business preference
4 programs of any type SBA loans, small businesses contracting 8(a) and on and on and on and on.
5 So we can see that the impact although your intent was a noble one of mentality, not having an
6 adverse affect that had not been achieved. So, one of the -- in trying to establish a more simple
7 system, basing it on employees, if you took a large sector of the industry like construction and
8 you say well, we're going to' make the system simpler and base it on strictly the numbers of
9 employees, but for certain industries we're going to' make it based on both employees as well as
10 revenues; then you've complicated the system. And, your proposal back then, last year, was to
11 have certain industries that were characterized by large amounts of or percentages of contracting
12 susceptible or applicable -- both of these size standards applicable for them, at least that was the
13 proposal. That would have seriously impacted the construction industry. The construction
14 industry is a huge sector of the economy and it just seems to us unfair to impose that type of a
15 double accounting burden or administrative burden on companies that very frequently are less
16 capable of that sort of administrative burden. So, I wanted to bring that to your attention. There
17 really are good reasons to have size standards based upon revenue as well as employees, and you
18 all are familiar with the reasons. Basically, you take in some sectors of the economy that use lots
19 -- a significant portion of part-time workers. When those part-time workers are counted as full-
20 time workers, you wind up with an unfair result. And so I think one of the things that you need
21 to do in your approach to reform is make sure that SBA is not cast in a position of appearing to
22 be unfair and it appears that you're unfair when you count part-time employees as full-time
23 employees in your size standard determination. On the other hand, there are industries such as

1 hardware resellers that basically are pasture industries. They may have very, very large
2 revenues, but they will have a few number of employees comparatively speaking. So having a
3 size standard based upon revenues for them, is probably unfair because it gives a very distorted
4 upward picture of how large they are when in fact they can be relatively small. So, these are
5 some of the reasons why it may be reasonable to have or continue to have size standards based
6 both on employees as well as size standards. -- employees as well as revenues is what I meant to
7 say. Participation in pertinent programs or set asides -- small business set aside programs or what
8 have you, small business programs, it just seems to us that's inherently unfair. You don't want
9 to be in that position. You need to grandfather these companies in some fair reasonable manner.

10
11 John Kline: Do you have a recommendation on how long the --

12
13 Stephen Denlinger: Yes, I certainly do. And, you can pick any reasonable number. But our
14 sense is that if there are companies that are presently small businesses as a result of your current
15 size standard but become classified as large businesses as a result of the size business standard
16 reform, then those companies should be given a period of time grandfathered in, a period of time
17 to continue to be eligible for a small businesses for a period of for example of three years. That's
18 a pretty standard sort of timeframe in Federal grandfathering and I don't think that would cause
19 any significant harm. Those are the main aspects of my comments. I want to thank you very
20 much.

21
22 John Kline: Thank you. Our next speaker is Leutrell Osborne.

1 Leutrell Osborne: Good morning. My name is Leutrell Osborne (O-S-B-O-R-N-E). As I
2 learned at CIA, you read your introduction. I represent the Minority Business Summit
3 Committee, a minority summit, I call it. We are composed of hints of multicultural advocacy
4 organizations and trade associations representing African Americans, Asians, Latin Americans
5 and Native Americans. I want to continue because we want to stop the train and give you a
6 solution. It's an easy one, five, ten and five. Formula; it works like this. Identify the top five
7 corporations in the United States, take the revenues – that's the five. Then break that five into 10
8 or take 10% of the average revenues – excuse me, understated. Take 10% of the average
9 revenues of the top five, then you break that up into – what I have to read because this gets a
10 little tricky – the third part, which is the last five. It says, "Take 10% of the average revenue, it
11 becomes the left top level of a five tier small business structure. In other words, 20% per tier
12 level with the largest firms of 5% average and the largest corporations identified for the Small
13 Business Administration to serve its course." There is a chart that has been presented to you
14 already that shows what a formula would be, but it's basically a way for you to break up the size
15 by revenues. It's just a formula for you to consider. It is not the end all. Now, I'm like some of
16 the other people that have been here. I've been impacted by the people's conversations and the
17 subject of grandfathering and the subject of contracts that get companies that get taken over by
18 companies after they have won a small business. I want to comment on those two issues.
19 Grandfather, three years. The issue of small business that wins an award and then that company
20 is acquired by a large company, obviously all the agencies are not playing fair and SBA doesn't
21 have a stick. So maybe you need to have a stick to help you understand that at agency there is a
22 process for you to look and make a determination that that company is or is not small business

1 any longer. So I don't even know how that got into your formula. Am I making sense on that
2 part of it? But the five- ten- and five is just a formula for coming up with some numbers.

3
4 John Kline: Would you review the last five again?

5
6 Leutrell Osborne: Okay. Excuse me, I didn't invent these words. What you have in the
7 presentation that is written is clearly written, and I'll restate it. Identify the top five companies,
8 corporations in each industry. Then, you take the gross revenues and determine the average.
9 That's within that industry. Then you take the 10% of that, which becomes one of the five tiers.
10 So it's a three-part. Five, ten and five. If you'd like to see the chart, I can show you something
11 like that. Basically, it's a formula and it's a way to deal with revenues and employees, too.
12 Questions?

13
14 Gary Jackson: Mr. Osborne, I have read comments to our advance notice and pertinent
15 testimony here of others basically that feel the size standards should be 100 employees, on to the
16 formula it would do a couple of things. One, it would have the potential of significantly raising
17 the size standard, it would also have some tiering notion that would look at contracts of certain
18 sizes and certain small businesses would compete on those contracts. Two questions, I think;
19 one is doesn't that make the system very complicated and then secondly, would a tiering system
20 where we had a very large small business as the top tier give an incentive to Federal agencies just
21 to contract more at the upper tier and crowd out opportunities for smaller businesses at the lower
22 tiers.

1 Leutrell Osborne: To answer your question quickly, yes, if you still allow large companies to
2 be considered part of the small. You know, it all depends on how you do your scrutiny. Part of
3 the problem today is that large companies are perpetrating to be small. That's one problem. And
4 the other problem is, when you look at what a small business is, what percentage of that small
5 business is represented by a large company that's got a subcontract. Those types of scrutinies
6 have to be done. So yeah, there is that potential. The idea is that a small business can grow
7 larger than what the size is now, is the objective. I think Hank said, let the smaller be larger; so I
8 think that's a part of our theme as well. Thank you.

9
10 John Kline: Thank you. Our next speaker is Dr. David Crowe.

11
12 Dr. David Crowe: Good morning. My name is David Crowe (C-R-O-W-E). I am the Senior
13 Staff Vice President for Federal Regulatory Housing Policy at the National Association of Home
14 Builders. On behalf of the Home Builders, I'd like to thank the Small Business Administration
15 for this opportunity to present testimony on the ANPR that was issued in December of 2004.
16 NAHB submitted some written comments on that ANPR and I'd simply like to amplify a couple
17 of those this morning. Those are the basis for determining size and how to count the number of
18 workers. And my comments are specific to the residential construction industry. To some
19 extent, the context of these remarks, it's necessary for me to explain some of the unique
20 characteristics of the residential construction industry. And, I'll give you a quick summary of
21 what those are. First of all, most companies are small. Secondly, regardless of their size, most
22 companies subcontract all of their work. Thirdly, the home building industry is seasonal, both
23 because of weather and because of buying patterns. And fourthly, the sales volume of homes

1 varies significantly across different parts of the country because of the price of homes. Let me
2 give you a little more detail on each one of those. First if all, most homebuilders are small. The
3 29 largest publicly traded companies are big companies. They collectively account for 16% of
4 the volume and roughly 11,000 homes per company. But the rest of the industry, the other
5 100,000 companies average about 16 homes per builder per year. In fact we know that 80% of
6 our members build fewer than 25 homes a year. Secondly, there is virtually no vertical
7 integration in homebuilding. Most of the work is provided by subcontractors, mainly because
8 there are so many different components, so many specialty trades to building a home, and none is
9 needed more than a small percentage of the time. So in many cases, a building firm is actually
10 constituted by the owner perhaps an administrator or an accounting person, maybe one or two
11 site foremen and a sales agent. The actual construction is being handled by installers, by finish
12 workers, by carpet layers, by craning crews and so forth. In most cases, the builder is really just
13 a broker of contracts, assembling the skills necessary to build the house rather than building it
14 with their own employees. The third distinguishing characteristic is that construction is highly
15 seasonal. The builders face fluctuations both because of weather, particularly in the north but
16 even in the south, and then partly because of buying season. So basically they have to have their
17 inventory ready for the summer, but most people are willing to move because of either school
18 schedules or vacations. A fourth characteristic is that prices are driven by the cost of their
19 underlying components. Most material prices don't vary by region of the country, but labor and
20 more importantly land, does vary. In addition, in some areas of the country, incomes are higher
21 so the demand for homes – home, home accessories, home amenities is larger. So as a result, a
22 building firm of roughly the same size, the same number of employees, the same amount of
23 housing construction each year will be substantially different in sales volume if that is the

1 measure. For instance, a modest sized builder in Cumberland, Maryland will build 16 homes a
2 year. That same sales volume, if that were the criteria, would qualify a builder in Washington,
3 DC building only 5 homes a year, simply because of the sales price of the house. These
4 characteristics of home building drive NAHB in recommendati on on what measure should be
5 used in determining the size of residential construction firms. SBA proposed annual receipts
6 have additive points cap for construction firms and a very small number of other industries. All
7 other industries receive only an employment cap. We urge SBA to consider only an employment
8 cap for residential construction. For the same reasons I have cited above, NAHB believes
9 employment is a better measure of firm size in home building. In value added terms production
10 of the building firm is the difference between what the builder receives and what they pay out to
11 subcontractors. Hence, the building firms work requires time and effort of personnel, which is
12 best measured by employment. The size of a home building business is not the revenue it
13 receives, but rather the output it produces, which is the labor. In addition to recommending the
14 size of home building firms be based on the number of employees, NAHB also recommends that
15 the number of employees be based upon the annual level. As I have described, building is often
16 affected by climate, as well as buyer habits, work product goes up and down with these
17 variations across a particular season, so therefore, we would certainly recommend that you not
18 use a specific month or even quarter as a gauge upon the employment level, but rather some sort
19 of national average – annual average, I'm sorry. I thank you again for the opportunity to speak
20 to you this morning. I'll be glad to answer any questions.

21
22 Gary Jackson: Thank you Dr. Crowe, just one question then. Using an employee
23 standard for construction you had mentioned that the industry felt currently integrated with much

1 of the work is subcontracted when employee standards are so unfair as they do not run over that
2 it becomes more work in-house and another builder has made involving one company being
3 smaller and another not, but they're doing the same amount of work or the companies have
4 similar enough practices in terms of subcontracting that happens at commence each site to
5 follow?

6
7 David Crowe: It certainly would disadvantage those builders that have a greater number
8 of employees in-house and carry out some of the subcontracting work within their own company.
9 My impression from our industry is that that is the exception rather than the rule; and where it is
10 the case, it's such a large company that none of the standards would qualify as a small business.

11
12 John Kline: Douglas Doerfler.

13
14 Douglas Doerfler: Good morning. My name is Douglas Doerfler (D-O-E-R-F-L-E-R). I'm
15 the founding President and CEO of MaxCyte, Inc., Gaithersburg, Maryland. My firm was
16 founded in 1999. We have 22 employees. We have less than \$1 million in revenue. We have –
17 these 22 people are senior level people, most have advanced degrees. We're developing a
18 technology to put genes into cells, and our primary – our dream is to develop this technology for
19 treating cancer, and infectious disease, neurological diseases including Alzheimer's. On behalf
20 of my company and the vast majority of biotech companies, I want to thank the SBA and you
21 ladies and gentlemen for conducting these public hearings – it is critical. My comments are
22 going to be focusing on the restriction in terms of revenue employees. But on the obstacles that
23 we face, in participating SBIR programs at NIH by a business funded by a syndicate of VC's and

1 individual investors. I think what's important to know here, the biotech industry is quite new.
2 It's 4 to 5 years old. This industry dominates the world, without question. We are the leading
3 country of the world because of biotechnology. And venture capital is actually quite new too. I
4 can't imagine five years ago, I'd actually be defending the venture capital industry. But in this
5 case, I think we need to – I think we have to discuss more about what our individual industry
6 helps – helps capitalize itself and what it is venture capital actually do for us. We were fortunate
7 to receive a Phase 1 SBIR grant several years ago, to explore a new way of burning cells devised
8 by one of our scientist. The sciences finest. It marinate a few months after we funded it –
9 founded the company. The idea is really exciting. It's able to put genes in a huge number of
10 cells. We had to apply this in two areas – one is bio-defense and the second is to accelerate the
11 development of flu vaccines. So that the time one can develop a better flu vaccine, you basically
12 cut down dramatically. That'll allow us to get new strains of the virus into a vaccine later to
13 inoculate more people. The idea was absolutely risky. It's groundbreaking and it was probably
14 beyond our means to do the research. We received \$100,000. We applied to the NIH. Our
15 proposal was assigned to a study section where we received a very high study section review
16 mark; the proposal was deemed to be novel, important and relevant to not only NIH's goals, but
17 also to the government's goal. We immediately conducted the research, upon the funding we
18 moved the project to development and we believe we successfully satisfied the development
19 plan. About a year after we received the SBIR grant, we were able to secure a major B round
20 financing via a syndicate consistent primarily of venture capital investors. These were basically
21 early stage investors, basically entrepreneurs like myself, who had created a way of bringing
22 funding into their group of investing companies like mine. They believed in our vision and they
23 were here to support the development of our technology in treatment of oncology patients and in

1 infectious diseases. This financing took us 18 months to complete. We visited with over 80
2 venture capital groups. All the while, aid to investors and my ex-friends kept the company
3 running over that period of time. Although we believe we're below the limit of 51% due to the
4 involvement of individual aid to investors in that B round, our legal counsel recommended we
5 not submit a ... due to the concern about the CBR judgment. And also if we received additional
6 funds we would certainly be ineligible by any measure. We had this project due to us. There's
7 an irony about this story I'd like to share with the 5 of you. We're 22 people; we have less than
8 \$1 million in revenue; and by anyone's definition, I would argue that we're a small business.
9 We have less than a year's worth of cash, but we pay wages. We pay nice wages. We pay our
10 employees an average of \$75,000 a year and clearly MaxCyte is becoming a story representative
11 of what the SBA is all about – creating businesses like ours and a number of the ones we heard
12 about. We needed to raise these funds from the venture capital syndicate at the risk and cost of
13 our trials and we were able to attract this financing in large part, because we could actually
14 develop technology. Now we have a technology that we think can help solve this flu problem
15 and technology we believe is going to help in bio-defense. The pride of capital is not typically
16 investing in those two areas. It's tough getting returns on them. So the SBIR program is really
17 the only way that companies like mine or companies in this industry can finance this sort of
18 development in these key areas. So we think the administration of the SBA -- the entire
19 administration is missing out a potential side to critical public health problems while providing
20 critical financing. By limiting government support of this type of funding for R&D companies,
21 it basically cuts the better companies out of providing the best science for the government. By
22 this restriction, risk of the discovery of new therapeutics and full bio-defense where there is less
23 commercial focus, we can't survive without VC funding. While the SBIR grant is a very small

1 part of what we do, but it's a critical part of us, determining our relevance in the marketplace in
2 advancing the technology. We also think by continuing this effort, we'll have a direct flow when
3 your age is how better to obtain its research objectives. I think you're going to hear some
4 discussion this afternoon from a gentleman from Bio who is going to talk more specifically about
5 what we're hearing from NIH in terms of the level of hauling the applications, We're going
6 into an age of in this day because of this change in the small business requirements. I urge the
7 SBA to think very hard about this. It really reflects Congress' original intent to award small
8 business – bringing awards to small businesses who can and have a future of attracting new
9 investors. I recommend that the SBA adopt a rule that addresses the actual ownership structure
10 of small biotech companies that are owned and controlled by VC's. Specifically, I suggest that
11 the size requirements be revised for the VC ownerships of the SBIR applicants to account for the
12 51% ownership. This will allow greater participation in the SBIR program. We are guests. I am
13 a guest. A VC who is owned by individual companies. And there is not one individual VC that
14 own and control a company, including a syndicate that own and control that company. So all in
15 this country that can prevent that from happening, are foreign governments. So even in that case,
16 a VC syndicate does not control that company. So we believe if these changes are enacted, we
17 will be able, small businesses, to continue to participate in the efforts to promote products that
18 will improve the nation's health, safety and security. [APPLAUSE]

19
20 Gary Jackson: Mr. Doerfler, we have heard testimony earlier today from some companies
21 that were in the biotech industry that is concerned that the SBA propose the policy change of all
22 the lines of companies, majority owned by venture capital companies who participate in the
23 SBIR program that prevent, well just the opportunities for SBIR grants. Do you see that

1 potential impact? Are there not companies that result in limiting opportunities from companies
2 that otherwise would participate in the SBIR program that don't have VC funding?

3
4 Douglas Doerfler: Let me try to answer your question in two ways. I've heard that argument,
5 and what I can tell from my company is still after the 97.5% set aside they're still going to have
6 2.5%. For the reason 2.5% is set up is because I can't get the 97.5%. Loans are typically
7 compared to lending institutions are not given to small companies. It takes a 200-page proposal
8 to give numbers that are virtually impossible for a company of our size to do that. I think the
9 issue here is that the government – I think the program once it heard of innovation that NIH
10 supports that, you want to get the best companies in there as you can. I think if you take the
11 better companies, and I consider my company a small company, if you take us out of the
12 running, all you're doing is, you're reducing the level of the expertise, helping us solve these
13 problems and these problems are serious problems that need to be solved. I'm not in favor of
14 SBIR funding, but we believe it is in our best interest to participate as much as we can to give
15 back into all sorts of technology.

16
17 Gary Jackson: Just a really quick question; you had mentioned that the VC syndicate that
18 you worked with had told you what protection – and you mentioned legal, I thought I'd not deal
19 with the legal protection, but what tactical protections exist that keep you in charge of the
20 company and the direction?

1 Douglas Doerfler: Well sure. Well, first of all, the Venture Capital -- no single Venture
2 Capital grew in my syndicate over the 20% public company. In aggregate they own about 51-
3 52%, and they would then invest it in the stock in the company. My control is on the Board of
4 Directors. We have a Board of Directors made up of 7 people, 3 of whom are venture capitalists.
5 So from that stance, we do control our company, even I control the company.

6
7 Gary Jackson: Fernando Galaviz.

8
9 Fernando Galaviz: Thank you very much for giving us this opportunity. Some of you may or
10 may not know that I'm legally blind and therefore, I need the assistance of Marvin to help me
11 make my presentation, and I hope that's okay with you. Basically, when President Eisenhower
12 was sitting in the Eisenhower room started the Small Business Administration, he basically has
13 made a great contribution. The SBA has made its contribution to this country. We have
14 organizations like Dell Computers, as you know, Federal Express that we have benefited. My
15 company has benefited and many of our members of the Association for Small Business in
16 Technology which I'm representing today, has benefited from small business programs. [Marvin
17 would you please ...]

18
19 [We must keep our eyes on practical business reality. Government policy must be designed with
20 practical common sense strategy which will deal with the contract reality of the Federal
21 government marketplace and the commercial and international marketplace. Federal government
22 policies must be developed on small business standard strategies to focus on the Federal
23 marketplace. The Federal, commercial and international marketplaces are significantly different.

1 For example, one of the presenters said to you, there's a high number of small businesses, I
2 forget what the figure he made; he made a comment that many of those businesses were under
3 100 employees. That's totally correct. We work in the community and meet with officials. Our
4 first consideration is to be to the Federal government and to the taxpayers. The Federal
5 government finds services from the community, large businesses and small businesses. They're
6 looking for reasonable capability and they're looking for support to their programs. For
7 example, if you were to continue to practice or abuse the size standards policy at the same in the
8 Federal sector as you do in the commercial sector, you know, the commercial sector, the
9 businessmen create their own structure and their finance and how they run their business. You,
10 the Federal government, tell us – the contractors – the guidelines of what we can use in our GNA
11 or budget. The government has not kept up with times. If you take a look at a home that was not
12 even \$150,000 in 1980, today that home is worth close to a half a million dollars. As a
13 contractor, if you were a contractor in 1980, with \$300,000 you could buy about five businesses
14 with other people and proposal with other people. Today, with the same \$300,000 you can only
15 buy two and-a-half persons to do business development or proposal development. The reality is,
16 that whenever we ourselves speak to people, elected officials of the Senate or the House, or even
17 someplace the officials and ask them where do small businesses pay for the sales force; because
18 nothing happens until you sell something. You cannot have profits, you cannot have sales unless
19 you sell something. And by imputing, going ahead and keep pushing down the size standard,
20 you're crippling, you create – as relates to Federal market. I'm not talking about the commercial
21 market – you're crippling the ability for small businesses to really develop. SBA has a good
22 record of some 8(a) firms that have developed to be \$150-\$200 million firms. But you ask
23 yourself, "Where are those firms today?" How come they had to be sold and usually at a not

1 favorable price. It is because – those firms, even though it might get to be a \$200 million firms,
2 to be competitive under GNA, they keep a lower level of sales capability because, as you know,
3 on your GNA, according to the guidelines that you, the government established, we have to pay
4 our management, we have to pay our HR Department, we have to pay all the activities, even this
5 development. This development proposal found a costly doing business with the Federal
6 Government are matched at the GNA levels. We, the small business, are not – let's say, we're
7 not gaining from what the large companies do. Over the last 10 years, 38% of sole source
8 awards went to large companies. You know that total ___ problem which for the most part is
9 competitive, is not even 5%. So therefore, even large businesses, with their bigger GNA budget,
10 particularly with the new era of GWAX contracts, they can put more sales people on the floor.
11 Fifteen years ago, a large company would not think of putting sales expenses for contracts under
12 \$5 million. Today, big companies put a ticket for getting to get a \$300,000 tax quarter, the kind
13 of marketplace that used to be small business. The average large IT firm in this year all four had
14 \$2.0 billion annual sales. Present SBA regulations establishes \$21 million size standards in
15 small businesses in the IT industry. Helping to graduate a small business firm classified other
16 than as a small business with annual sales of \$30-\$50 million or even \$100 million can compete
17 with a \$2.1 billion firm.

18
19 The Federal market, we are forced to compete. We don't choose our competition. In the
20 commercial sector, you have more flexibility. The commercial sector, you can work a lot with
21 relationships. In the Federal sector, you have to be careful how you develop your relationships
22 because if it's a particular relationship, you can go to jail. We have to be strictly in a true
23 competitive situation. Now how can a \$22 million IT of present size standard is \$21 million for

1 over three years. That means that when that firm does \$22 million, it's other than small. How
2 can a \$22 million or a \$40 million company or a \$150 million compete against a \$2.2 billion
3 organization? And the five integrators in IT, in S104 average \$2 billion or \$110 million. It gives
4 a breakdown of some of those integrators. Now, it seems to me that using common sense, and
5 that's the theme that we're trying to hit here -- since SBA or the government have not spent the
6 money to really identify what is viable by industry. What is a small business by category really
7 recently viable to compete in the open market would not expect for SBA or the government to
8 develop a lot of Lockheed Martins. But the fact is, right now the way you have it structured of
9 the active business, would be leaving just 1% of size standard consideration when in our view, at
10 minimum, it is fair and reasonable to say in this country, that the small business community
11 should be worth at least 10% in the Federal government market compared to any large business.

12
13 John Kline: Do you think proposals govern –

14
15 Fernando Galaviz: Yes, we're coming to the ... It is reasonable to design our policy that
16 since the difference or for the average IT firm sales, which is \$2.1 billion propose the top tier of
17 the small business size standards strategy be 10% of that \$2.1 billion budget and that should be
18 the top tier for size standards. And we submitted documents; it was submitted by a previous
19 presenter that these awards specifics on database. And this proposal sought the five-ten-five –
20 presented earlier today. Basically, it identified the top five corporations in the industry, take the
21 total gross revenue public and private sector, determine the average revenues of those
22 corporations over the last five years, take the 10% of that average revenue and it becomes the
23 top level of a five tier small business structure. We have to protect start-ups. We have to protect

1 the different developments of these firms. And therefore, I think that the model that the
2 Department of Commerce is using comments is a starting point. So you already have something
3 that is working; something is wrong. The overall – the too many recommendations we have is
4 please help the provision; there is a big difference in dealing with the Federal marketplace and
5 the commercial side relationships. Two different kinds of size standards strategies.

6
7 John Kline: How would the different percentage goal for the 20% tier?

8
9 Fernando Galaviz: With each part of the tier we get an entity.

10
11 John Kline: Is it 20% for the whole overall goal?

12
13 Fernando Galaviz: Yeah. I think, I think overall goal. I think you have to simplify it; I think
14 there's different effort that basically, what you're doing is with this concept is developing
15 clusters of reasonable competition in basically one goal, one overall goal.

16
17 John Kline: That you have to simplify it. How many times do you have to choose
18 between one giver to another?

19
20 Fernando Galaviz: Basically, that idea, according to the size of at the level of development
21 of the firm, that puts it in a particular bracket. Don't forget, the small tier can compete with any
22 of the tiers, okay. It is only the companies that have developed a little bit more that cannot
23 compete down to the lower tier. So there's a protection you keep opening. But the fact is this,

1 the Federal government, particularly DOD, has been tremendous success for small business set
2 asides. In Colorado Springs there was a set aside was worth \$800 million – that was not a
3 GWAX that was a direct award. There's a lot of competition of small business. Atlantica Air
4 Force Base, they, for the first time in 40 years, Atlantica Air Force Base was made a small
5 business set aside and that's the most sophisticated grade space in the world that contractors now
6 bring 50-60 months high level of success, and that contract was worth \$474 million.

7
8 John Kline: Okay.

9
10 Fernando Galaviz: And we do recommend that SBA promote those kind of successful stories,
11 because it helps.

12
13 John Kline: Thank you.

14
15 Fernando Galaviz: Thank you very much for your attention. Any questions?

16
17 Gary Jackson: One question, Mr. Galaviz; and I asked this of Steve Denlinger, earlier –
18 that a tiered approach does add some complexity to the program. Also, could it be a situation
19 that you give an extension to agencies just to meet small business goals by going to higher tiers;
20 to the higher tier there appears that there may be opportunities for smaller agencies that could not
21 result, the fact may be that agencies are stopping contracts to firms that work for larger small
22 businesses who can't afford it.

1 Fernando Galaviz: With all due respect, if SBA has a good relationship with the Federal
2 agencies, which quite frankly, that area you need to look at, the – otherwise, GSA would not
3 have pulled the stunt they did – Alliance/GSA contract. The fact that the agencies – once they
4 know they have to meet the 23% goal, the objective, it is lot of range of work given. I am
5 confident that just the natural course of business will give you a balance. On the other hand, if
6 you had enough CPR's on the marketplace, they could play a role making sure there is balance.
7 So I believe that basically, though there's a lot of areas in this ... they can work today if the
8 regulations that are in place would like for example the subcontracting provisions, everyone in
9 the industry knows there's a weakness there, but if the – the contracting officers use what is
10 authorized them, they have a subcontractor that should be working. To answer your question,
11 I'm confident that with SBA good leadership and good public relations with the industries that
12 that will not be that much of a problem.

13
14 John Kline: Thank you. Armentha Cruise.

15
16 Armentha Cruise: Good afternoon, my name is Armentha Cruise; my company is The Aspen
17 Group. We've been in business for 17 years and basically, I kind of want to echo some of the
18 things I heard and keep it short and sweet. One of the things I heard was that small has to be
19 larger than it used to be. I think that the goal is to grow realistically, you set the size standard that
20 certain businesses must reach before being classified as large businesses. For example, I'm in
21 the staffing industry and several years ago, I had reached the threshold of \$60 million. I
22 appealed to Mr. Gary Jackson – I hope you remember that – and in appealing to him, he asked
23 me if I would gather the data to support what was going on in my industry. I told him that \$6

1 million would do nothing in my industry; that in terms of the growth, in terms of what was going
2 on, it was just a bare pittance. In getting the data for him, he looked at it, he evaluated it, he
3 came back and he said he agreed. He said, "We're going to raise that standard." He raised it, but
4 still – and I thank him for that, but it's still not enough because of the growth in our industry. As
5 he said, we can look at that later. But he certainly did raise it from \$6 to \$11 million. But
6 clearly, when you're dealing with IT, you're dealing with professional staffing, things of that
7 nature – see the problem is this – you look at how you protect everyone. The small companies
8 who need to be protected, must be protected. These are small companies who will grow into
9 larger companies and once they grow into larger companies, they'll want you to re-evaluate what
10 the standards are so that they can benefit. But what happens is that, in my industry for example,
11 saying that today, what you might consider large -- I am nothing, in terms of the giants that are
12 in the industry. So something I would like you to consider, the classifications that are available,
13 that we have that you are looking at, and be fair, reasonable in your consideration of coming to
14 some kind of decision where you can certainly look at the various classifications and hopefully
15 be more reflective of the reality of what's going on actually in the industry and I thank you very
16 much.

17
18 John Kline: Thank you. Rusty Palmer. At this point, I think we've gotten through the
19 entire list so I'll call the people one more time and if they're not here we'll take off for the next
20 break. Vicki Tarallo. Arnold Jolivet. Vanessa Ali. Vinnie Goel. Vincent Perry. Bill Johnson.
21 Vinod Goyal. Eileen Straughan. Shirley Black. Angela Moody. Matt Collins. Bill Sylvester.
22 Anthony Evans. Devindar Sareen. Gregory Taylor. Serena Chreky. Richard Greene. Okay.

1 Anyone scheduled for the afternoon that would like to speak now? Okay then. We will then
2 return at 1:30. Thank you.

3
4 *[LUNCH BREAK]*

5
6 *[RESUME -- 1:30 p.m.]*

7
8 John Kline: As I said this morning, the proposed rule of March 19,2004 to restructure
9 size standards and basically, we're establishing them primarily on an employee-basis. We
10 received more than 4,500 comments in response to that proposal and on July 1, 2004 we
11 withdrew the proposal because there were so many comments regarding it. At this point in time,
12 SBA has not proposed anything. We sent out an Advance Notice of Proposed Rulemaking on
13 December 3, 2004. Based upon the comments we received, we identified issues that the public
14 itself had identified to us. So there are certain 5, 6, 7, 8 things that we've identified in the
15 Advanced Notice of Proposed Rulemaking. However, none of those are SBA's
16 recommendations or as they sometimes we would say, Beaver issues. At the outset, we want you
17 to comment on them that's why we've decided to hold public hearings throughout the country to
18 identify where you feel should be simplified, what needs to be changed. About your speaking
19 today, your testimony will be recorded by a certified court reporter. When you get to the podium,
20 please state your name and spell it and identify your organization for the record. Your name
21 will be called in the order listed on the registration docket. If an individual is not present when
22 called he or she will be called again at the end. Each presenter will be permitted five minutes for
23 all presentations; and I'll let you know when that time is up. If you have a prepared testimony

1 you'd like to give to us please do so before or after your testimony, that's fine. A member of the
2 panel may ask questions of you at any time. That's pretty much what we're going to do. Let me
3 introduce the panel. On the far side over here is Joe Loto, who is District Director of the SBA,
4 Metropolitan District Office. Stephanie Watkins is our Regional Administrator for Region 3 of
5 the SBA representing this whole area, Pennsylvania, Delaware, West Virginia, Maryland,
6 Virginia and D.C.; Vince Gansotta Size Specialist in the Philadelphia Regional Office,
7 Philadelphia, Pennsylvania; John Kline, Associate General Counsel for Procurement Law and
8 Gary Jackson, Assistant Administrator for Size Standards.

9
10 The first person who will be speaking this afternoon will be Pratash Mehta.

11
12 Pratash Mehta: Good afternoon. Thank you for the opportunity. My name is Pratash
13 Mehta (M-E-H-T-A). I just want to thank you very much for this opportunity. I worked with the
14 small business for the last 24 years and currently I'm the CFO for the PSI International, located
15 in Fairfax, Virginia. That position I'm here, for last 16 years. PSI International is also a small
16 business and everywhere face the problems; we are also facing the same problems in the small
17 business. My concern is here in the size standard situation. What I want to do is as an
18 accountant, we face all the time how to sometimes we can -- the numbers what we do here is on
19 the size standards -- I want to do it on the -- recommend it to the panel to do it on the employee
20 base. Employee base also on the 500 and lower employees considered to be a small business.
21 And whenever the employee has become, I want to have it such a way it is a billable staff instead
22 of employee. Because if you put full-time employee there are so many ways to define full-time
23 in the company. At the same time in today's environment in the IT field, we have probably over

1 100 employees on 1099. That means what's happening is when corporations do most of the time
2 whenever they reach to the size standard on employees they might forget people on 1099 instead
3 of W2. Also sometimes we subcontract employees. I want to do a certain way that is a billable
4 staff. If you have a billable staff then it's very easy to find out information and that's where I –
5 recommend it on that. Any questions?

6
7 Gary Jackson: Thank you. Just explain a little more how you would identify billable
8 staff.

9
10 Pratash Mehta: The billable staff is that you can identify to the when you do invoicing to
11 the government. That's always as a labor category, always has number of people, name of the
12 people and number of hours you worked.

13
14 John Kline: So regardless of the number of hours, there are times as an employee
15 they're there on you billable?

16
17 Pratash Mehta: Yes, but at same time, you'll have to be in the billable staff if you want to
18 define correctly then you can just say what we do is for the 401(k) and all those places that the
19 IRS has defined; anyone who work more than 1000 hours during the year, that is considered to
20 be equal to full-time employee according to the IRS. Same thing you can do it here also.

21
22 John Kline: Do you do recommend 500 employees? Is that what you're saying?

1 Pratash Mehta: Correct. 500 and less.

2

3 John Kline: For all industries

4

5 Pratash Mehta: For the – it's previously, old one was 7379, but new one is 514219 or
6 something. We're information technology -- that's why I'm picking this 500; because if you do
7 it 100 employees then it's very difficult and if you do the revenue base also it's very difficult
8 because as what happening as an accountant, what we do is this. If we don't send the invoicing
9 to the last six months, the number of the invoice is going to the government. We don't send it to
10 them; and what happens is that that's when revenue is lower. And that's why our receivable be
11 higher, but the revenue will be lower. And that's why revenue is very difficult to count as a
12 small business. That's why we think you have to put it in as billable staff and it has to be less
13 than 500 employees.

14

15 John Kline: Okay, thank you. Next, David Milbourne. Tyrone Pitts. Hashish Powell.
16 Eric Adolphe.

17

18 Eric Adolphe: Good morning. Eric Adolphe (A-D-O-L-P-H-E). I would like to start by
19 thanking the SBA for its leadership in helping to nurture the small business as a sector, the true
20 backbone of America. My company, Optimus Corporation is a strong example of the
21 entrepreneurial spirit that built this nation. Founded in 1992, we now employ approximately 190
22 people with a fast growing revenue base. Power despite our growth and in many ways because
23 of it significant obstacles remain. This is because as proposed size standards don't reflect the

1 economic realities and greatly impede the ability of companies like mine to reach our full
2 potential, giving us a runway that in essence, cuts our ability to truly take off in the marketplace.
3 The growth in -- or the truth is growing businesses don't want a handout. We don't want -- I
4 don't want a handout. What we're looking for is a fair opportunity to compete and grow and
5 we're looking for policies that promote the underlying aims of the SBA charter which is not just
6 to encourage to start your businesses, but also to foster development, growth and expansion of
7 these businesses to achieve competitive viability. This is good for all sizes of business in the
8 economy. After all competition is what drives the success of the marketplace. Right now, the
9 size standards are based on an antiquated model that isn't fully aligned with the SBA's mission.
10 The NAICS Codes and their predecessor the SIC Codes were not developed to determine
11 whether or not a company is ready to compete in the marketplace which is de facto what they're
12 being used for today. They were developed to facilitate the collection of statistical data.
13 Currently, there are many hundreds of NAICS Codes for one sector alone for example, and these
14 codes are literally all over the map; sometimes causing companies and agencies alike to
15 essentially force fit a square peg in a round hole and many times in an attempt to make codes
16 work for a specific contractor or to exclude a specific contractor. The reasons that the size
17 standards represent a flawed approach are many for a few examples, may help paint a picture.
18 For instance, a firm can be working with a government agency for many years and a firm is
19 doing a great job and continuing to help the agency meet its mission. Unfortunately, the day
20 comes when they have outgrown a size standard and can no longer do the work on that contract
21 as it is written. This is akin to a chef being forced to tell their best customers they can no longer
22 do business with them because they had a good year last year. I hope this sounds silly to you
23 because that's exactly what's happening in this marketplace; and the NAICS Codes, as they are

1 being used today, do not help to create viable competitors. We're looking at proposed changes
2 that will be used to determine whether or not a firm is ready to compete with the likes of
3 Lockheed Martin, for example. Neither the gross receipts or head count alone is appropriate. For
4 example, the proposed regulations do not take into account such as used in employee turnover
5 when you're looking at head count, and are based on metrics that are difficult to verify. From a
6 revenue standpoint, and so basic the term small and large mean different things in different
7 places. A \$30 million company in a Montana town for example means something completely
8 different than a \$30 million company in Washington, DC. There is a critical need that to assure
9 the contemplated rules support mid-range companies who are currently in a regulatory no man's
10 land, so that the competition and innovation that these companies bring to the marketplace is not
11 lost and we are in fact working towards creating a base of viable competitors. In addition, a
12 proposal for a one-year review is extremely unrealistic as it would cause contractors to move in and
13 out of being classified as small business on a yearly basis which in turn would encourage
14 contractors to look for ways to get around the regulations. There would be no certainty and
15 would cause confusion for government program managers resulting in an increase of
16 administrative burden for the government. These problems are further exacerbated by unfair and
17 perhaps illegal contract bundling practices that occur. First that get to the point where there are
18 \$30 million in revenue and are prepared to begin competing for \$10 to \$20 million competitions,
19 quickly discover that these contracts no longer exist because they have been bundled into a large
20 omnibus effort, creating a bonanza for the large companies. It is time to rethink size standards
21 based models because these systems don't work. With this in mind, I'm proposing an approach
22 based on the way the investment community and the financial community looks at small business
23 development growth. Using this approach, I propose a three-tiered system and although this

1 model in its exactness may not be what we need, but it serves to illustrate how these
2 communities look at it and I think a better model. In the three tiers what it would include what I
3 call existence survival of maturity. Existence would feature set-asides. At this stage it would be
4 similar to the 8(a) program, the first four years of the 8(a) program and this firm would have
5 actual set aside contracts. But what we would be measuring are things like customer satisfaction
6 as opposed to the number of contracts this firm received. Customer satisfaction is a measure
7 that's already being measured by Dun and Bradstreet, so we're not adding an additional
8 administrative burden. Under the second tier I would be looking at firms – firms to move to the
9 next tier should have excellent customer satisfaction and customer retention. At the second tier,
10 we're looking at firms that are in a range from 150 to 500 employees with receipts that might
11 range from \$15 to \$50 million. I say a range because we want to err on the side of maximizing
12 the number of firms that are able to participate and give them the opportunity to build on success
13 as opposed to penalizing them for their growth. Let me just kind of conclude, I want to strongly
14 encourage – my notes are there – conclude that the SBA should consider something more
15 innovative and not go with the way we've been doing things because any model that you come
16 up with that looks solely on head count or receipts is going to have the same problems five years
17 from now. Our hope is to create an environment that enables companies to successfully compete
18 and grow with is the true nature of the SBA as opposed to an obsessive focus on head count,
19 numbers, quotas, etc. Thank you.

20
21 John Kline: Under your tiered approach, would there be set asides under each of those
22 tiers? How would that work?

1 Eric Adolphe: The first two tiers there would be set-asides. The third tier would be an
2 open competition. But the key in each tier is that, as they move from tier to tier, you do not take
3 away. It's inappropriate at any time to take away a firm's business, particularly if they have
4 gained a certain amount of expertise and customer satisfaction. Just because they graduate from
5 a tier, you do not come back and say to them, well now you're too big so you can no longer
6 support this customer that you've been supporting for the past five years.

7
8 John Kline: Thank you. Robert Graziano. Harold Witt. Jamie Balboa. Mooree
9 Ruffin.

10
11 Mooree Ruffin: Good afternoon. My name is Mooree Ruffin. I'm the Executive Vice
12 President for Capital Formation, an emerging company in the Biotechnologies Industry
13 Organization. On behalf of Bio, I would like to thank SBA and members of the hearing panel
14 today, for conducting the series of public hearings to provide the small business community an
15 opportunity to comment on the future of SBA's size standards. My comments today will focus
16 on an issue that directly affects many biotech companies. That is, the exclusion companies with
17 majority venture ownership from participation from the SBIR and STTR programs. Our
18 organization, Bio, represents more than 1100 biotechnology companies and the universities and
19 research organizations that collaborate with them. We have member companies in all 50 states.
20 While we represent established companies in the industry such as AnJet and Amtech the vast
21 majority of our members, over 85% are small emerging companies with less than 500
22 employees. In fact, more than 50% of the companies have fewer than 50 employees. As the
23 executive vice present for Capital Formation, an emerging company for the organization, I'm

1 responsible for working with all of our companies to assist them with the daunting, never-ending
2 process of raising capital to fund the expense of free clinical research and extensive clinical
3 investigative work necessary to bring novel therapeutics to the market and to the patient. For the
4 past two years we have been contacted by hundreds of companies, members and non-members
5 who are looking for guidance on how they should determine their size for the purpose of
6 qualifying for SBIR grants. Frankly, they're confused and many of them are very angry. For a
7 company with 20 employees struggling to make payroll with less than two years of cash to fund
8 their research, it strikes them as inconceivable that they would be considered ineligible for an
9 SBIR grant because they're deemed to be too large. Under the current interpretation of
10 eligibility, they're considered large because as a start-up biotechnology company they did what
11 virtually all of our early stage companies must do, to continue their research, they raised an early
12 round of venture financing. In our industry, even the relatively small amount of money a
13 company will raise in its first round of financing which could be \$3-4 to \$8 million will usually
14 result in new investors usually a collection of venture funds owning more than 50 percent of the
15 company. As we have surveyed our members, a majority of them have raised venture funding,
16 had ownership structure where the collection of venture investors and other outside investment
17 groups usually own more than 50% of the company. I'm only aware of a few cases, however,
18 where a single venture investor owns more than 50% of the company. While almost all our
19 companies will need to raise venture financing to advance their products for the marketplace,
20 many small biotechnology companies have come to rely upon the SBIR program Phase 1 and
21 Phase 2 grants to fund cutting edge research in areas where venture capital and other sources of
22 financing are difficult to obtain. This is typically the case for companies that need early stage
23 funding for proof of concept while they are putting together their initial rounds of financing. The

1 other instance in which SBIR grants have been very useful to our company, our industry, is to
2 fund new research on programs that are different from the lead programs around which they have
3 raised their venture financing. Many companies will raise their venture round that is deliberately
4 sized to the amount of funds needed to advance the lead program. This is the case because of the
5 amount of money required is usually relatively high and the company does not want to take on
6 more debt than necessary. While they are working on these lead programs, they often come
7 across new potential, indications or other project opportunities that they would want to test in
8 terms of whether they will be able to raise additional funds. The SBIR program is ideally suited
9 for this purpose. In the biotechnology industry there is a specific need for both SBIR and VC
10 funding. The lengthy and costly clinical development process for biotechnology requires
11 investment is out of reach for most small business as it is.

12
13 John Kline: That's a good point.

14
15 Gary Jackson: Comments regarding this issue as well, where some people were saying
16 that if you get venture capital funding you don't need the SBIR funding as well. Do you get
17 that?

18
19 Mooree Ruffin: Yes. As I was pointing out in my testimony, most of our companies
20 require extensive amounts of money to fund all of their programs. So, venture funding alone is
21 not going to be sufficient for them to continue the research that they need to do. They need to
22 look at sources of funding and the SBIR program has become a critical source of early stage
23 funding in our industry, especially at the very early stages where venture capital isn't available or

1 while they're in the process of trying to raise their venture capital; and usually when they raise
2 this money, they will raise, even in the early stages, amounts perhaps sufficient to keep their
3 research going for another year or 18 months; and in that time, they need to look for additional
4 rounds of financing to fund projects. The SBIR program has been a very effective way of
5 supplementing that money. The venture funding out there is not sufficient alone for these
6 companies. Just a couple of other points I wanted to make. The nature of the risk and expenses
7 required in biotechnology development means that even the strongest small prized biotech firm
8 suffer from cost and financial stress, and that was the point I was making. VC financing is all
9 but required for this industry to continue doing this research. It is our belief that restoring the
10 eligibility of the majority venture owned companies in granting the VC exclusion from affiliation
11 would not adversely affect the ability of small companies without such access to private capital
12 compete for the awards. Based on discussions we've had with NIH officials, they believe there's
13 more than enough funding in the program to allow for the participation of both
14 venture and non-venture fed companies. And we've also had conversations with them recently
15 about the impact of the exclusion of venture companies from the program on the quality of
16 grants they are receiving. For several of the institutes, they consider this to be a very big
17 problem right now and something they would like to rest.

18
19 John Kline: One of the commenters this morning was saying that the likelihood of
20 winning SBIR awards it depends by the number of proposals likely submitted. Those who are
21 for VC funding think that it increase the chances that they are exposed, but they'll be eligible
22 after more and more refinancing. That's something that --

1 Mooree Ruffin: I'm not aware that that is common practice among our companies. As I
2 said, usually they have a very specific program. They want to apply to the SBIR program at
3 NIH. I mean there is a particular type of research they are interested in and the SBIR program is
4 like really suited for that. I am not aware of any of them pursuing a strategy that where they will
5 pursue multiple grants in hopes that they will increase the odds of getting the money just by
6 submitting these multiple grants.

7
8 John Kline:_ Thank you.

9
10 Mooree Ruffin: You know, and the only other thing I was going to add and that in the
11 testimony that I provided with you we have results from two surveys that we did of our member
12 companies, one that we did earlier this year, and one that we did just recently; and I won't go
13 into the details, but one statistic that I wanted to mention is that it is clear from the survey that
14 this is having a dramatic impact on our industry. Most of the companies that have been using
15 this program are no longer applying for these grants and as you will also see in the survey, that
16 the majority of private companies that we represent are now excluded from the program.

17
18 Gary Jackson: Just one question. Under our current affiliation rules if a company is
19 owned by a large business, we look at them together in determining size. The proposal that you
20 recommend would get deviation from that, what is different in your area in relationship with
21 venture capital companies you are comparing to other large companies that have been
22 considered?

23

1 Mooree Ruffin: That's a good question. In our industry, what we see primarily is that
2 companies attracting venture investment usually do it from a pool of venture investors, and these
3 are usually limited partnerships not controlled by any one corporation, so it's a collection of
4 individuals and institutional money put together in a pot. And then this is managed by a venture
5 capital firm; and usually they will go – they will syndicate the rounds of financing they do, so
6 that they can diversify their own risks. So it will not be one venture capital company investing in
7 the firm. They will go out and find several others to contribute money as well. So it's hard to –
8 it's really affiliation will sort of look through to one large company that is controlling this
9 process.

10

11 Gary Jackson: In terms of control of the company in that syndicated relationship, does
12 the small business deal have significant decision making authority, or does the syndicate have all
13 –

14

15 Mooree Ruffin: Absolutely, absolutely. I mean usually they defer to the management that
16 is in place. Sometimes they will put other management in place, but that management is not
17 controlled by one firm; and it's usually shared, as I said, among a number of different
18 institutions. And they are entrepreneurs just like the entrepreneurs fall in the companies to sit on
19 the Board, and the companies will put in place rules to ensure that no one group dominates the
20 company or controls the company. So there are a number of things you could do to protect
21 against that.

22

23 Gary Jackson: Thank you.

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Mooree Ruffin: Sure.

John Kline: Cordell Smith.

Cordell Smith: I'm Cordell Smith; that's (C-O-R-D-E-L-L S-M-I-T-H) and I'm Executive Director for the Hub Zone Contractors National Council and I appreciate the opportunity to testify today and I have given you a prepared statement and I will spare you from having me read it to you; just take a few of the high points. The statement goes into a couple of the points raised in the ANPRM in terms of some of the specific questions, but I just want to hit a few high points. Our arguments and our concern with the overall rulemaking falls into three general categories. First, we don't believe that the need for the rulemaking has been established. Second, we don't believe it will achieve the goal of simplification. And third, we're concerned about the impact on small firms. With respect to the need for the rulemaking, SBA has already developed 50 years of experience defining what a small business is. And the table currently in a Code of Federal regulations represent the accumulated experience with the different industries as to how that should be applied to each of the industries. The proposed rule last March which I understand obviously has been withdrawn gives one illustration of how one might look at this by largely eliminating the revenue-based approach and moving largely to employment based approach. But in some cases, the rulemaking still recognizes differences among industries and retains the revenue standard for some types of firms; and in fact, for some of those firms such as construction, it is proposed that firms have to meet both an employment and a revenue standard. Our suggestion would be that unless there is a real need that has been shown that the size

1 standards need to be revisited, then we simply leave well enough alone for right now. Secondly,
2 our concern would be that it would not achieve the goal of simplification. Again, as an example,
3 where in a couple of industries there was a proposal for both employment and revenue size
4 standards. This actually compounds the complexity of the size standards for those firms in those
5 industries. We also would be concerned about the notion of multiple tiers of small businesses.
6 Particularly, if there's a proposal for separate set asides of different tiers. It simply becomes a
7 very, very complicated proposal. And I understand the problem that is being attempted to be
8 solved with that approach. But, you get to a point where something that makes academic sense
9 in an environment such as this where we have a chance to visit about it, think about it all day is
10 not really a situation where small business owners or contracting officers have that kind of
11 luxury to absorb that kind of complexity and make such a system work. As it is, the contracting
12 officers in many cases think the small business program is already more trouble than it's worth
13 and we would be reluctant to give them any more ammunition to make that point. Simplification
14 is a – would definitely be a good policy, but we would be concerned that the rulemaking thus far
15 has not shown that it could get us there. Finally, our last concern would be the effect on small
16 firms. The proposed rule discussed in its analysis in the hub zone program in particular, we are
17 concerned about an additional angle on this. We have 13,000 certified firms in the hub zone
18 program, many of which have not gotten any contracts at all from the program after many years
19 of involvement. The government has not yet met its 3% goal even for any year; but a lot of these
20 firms by being participants in the program have had to make up for an investment simply to be
21 certified. They have had to their office in the hub zone and they have to have 35% of their
22 employees from hub zone. They are making an investment before they can even compete for the
23 benefits of the program and so far, they don't have anything to show for it. We would be very

1 concerned if many of these firms now got a notice from SBA saying you're no longer small and
2 we're removing you from all small business programs under the new size standards, and
3 therefore, they walk away having made these investments in their communities and having
4 nothing to show for it. We would be concerned about the cynicism that that would result as a
5 small business. Those are the three high points in our testimony.

6
7 John Kline: We heard earlier today comments that some of the reasons that they even
8 supported changing some of the size standards rule that contracting officers would switch back
9 and forth depending upon whose ... at one point you might want to go with in order to get the
10 kind of system they may want. Would this system make it better? Worse? Or, leave it at that?

11
12 Mooree Ruffin: I would think that the number of levels that you have would not affect the
13 ability of someone to gain the system if they were determined to do so. What that level actually
14 is, I don't see how that would – how that would affect them.

15
16 John Kline: So that would – regardless of what SBA did?

17
18 Mooree Ruffin: Potentially. One would hope that the contracting officer would reach that
19 decision on what makes such use in confrontation with the program people, with market research
20 and so forth. If someone is determined not to act in good faith, I'm not sure that changing the
21 size standards would change that.

22
23 John Kline: Thank you. Kelly Slowe.

1
2 Kelly Slowe: Good afternoon. It's been a long day for you guys. My name is Kelly
3 Slowe and I am the Director of medical industry group with the National Venture Capital
4 Association, which is a trade association representing 470 venture capital firms in the United
5 States. As you know, venture capital is the investment of equity to support the creation and
6 development of new growth, growth oriented businesses. Venture backed companies are critical
7 to the U.S. economy in terms of creating jobs, generating revenue and fostering innovation. This
8 segment of the economy, the entrepreneurial segment, is the true differentiator for the U.S. in
9 terms of global competitiveness. I'm here today on behalf of those venture backed companies
10 that are developing innovative technologies to improve the quality of our lives and raise our
11 standard of living. Historically, dual finance sourcing of the SBIR program and the venture
12 capital community have allowed many of these promising companies to produce groundbreaking
13 research and simultaneously build a viable business that will bring these innovations to the
14 marketplace. However, the changes in the interpretation of the SBIR grant eligibility has
15 prevented small companies that receive venture financing to also receive SBIR grants,
16 effectively cutting off the critical research lifeline. This dynamic has negatively impacted young
17 companies across the country but has been troubling in the life science area. Venture
18 investments in the life science sector during the past 20 years, has vastly improved the quality of
19 our lives. With more than one in three Americans directly benefiting from venture backed
20 innovations. Medical devices such as the pacemaker, MRI, as well as pharmaceuticals such as
21 Ambrial for arthritis and Hepfrin for cancer were all brought to the market with venture capital
22 funding, in investment. Yet before the venture capital firms were involved, basic research that
23 led to the discovery of life saving breakthroughs needed funding. This is the type of research

1 that the SBIR program has supported in the past. Yet for the last two years we continually
2 receive calls from our member firms or their portfolio companies, alerting us that another
3 eligibility situation where the SBA ran has been awarded but cannot collect upon because the
4 company was a venture backed company. As a result, several of these companies have shelved
5 research products, laid off scientific teams, and scaled back operations. There is an enormous
6 myth in the marketplace that says that if you are a company that received venture capital, you
7 have hit the lottery and this does not need government funding. Nothing could be further from
8 the truth. In no other industry sector does the cost and time associated with bringing a discovery
9 to market as significant as in the life sciences. In 2004 the venture capital industry invested more
10 than \$5.6 billion in the sector, with the average investment of each biotech company of \$11.7
11 million. Yet these venture capital investments are aimed primarily to commercialization
12 products. They are often not significant to meet the company's ongoing research. With the
13 average cost of bringing a new drug to the market at \$800 million, again, biotech companies
14 usually cannot divert precious venture capital funds earmarked for business growth to embark on
15 new research projects. Although these projects may hold the next promising breakthrough
16 treatment for Alzheimer's, cancer or heart disease under that current eligibility interpretation.
17 The SBIR program cannot fund these projects either if the company has received venture
18 funding. As a result, additional research is stalled or permanently shelved and the SBA has
19 missed a tremendous opportunity supporting the support and promising innovation. The Small
20 Business Reauthorization Act of 2000 sought to extend and improve the SBIR program,
21 stimulate technological innovation, use small business to meet Federal research and develop
22 needs and strengthen technological competitiveness for small businesses in the United States. In
23 excluding venture backed companies from eligibility, the SBIR program is biotech many of the

1 Americans most promising and innovative small businesses. After all, these are the companies
2 whose technologies, business plans, financial strategies, and management teams have all been
3 debted by highly skilled professionals with extensive backgrounds in science and businesses who
4 earned their living identifying the best and brightest opportunities.

5
6 John Kline: Is it necessary to have one who presents a VC owners; why can't we just
7 say -- why is it necessary to have VC ownership of that?

8
9 Kelly Slowe: Fifty-one percent is what we need. Again, it goes back to the investing of
10 the venture capital -- all the different companies are invested into the funding or different
11 companies -- I'm sorry, you caught me off guard. A little new to this. I'm new to the industry.

12
13 Gary Jackson: This may catch you off guard too, but I'm running out of questions for
14 people testifying on the VC issue applied to our hearing that we had earlier this month; one
15 concern is expressed that if we allow companies with authority ownership by venture capital
16 companies then the SBIR program will offer less opportunities than companies that are not
17 located in major metropolitan areas where there's a lot of VC activities, such as Northern
18 California, the Boston area, even around here compared to rural states, a lot less venture capital.
19 You see, move SBA grooming towards what you are recommending to smooth affiliation of VC
20 companies and allow eligibility-impacting companies in rural areas to participate in the
21 program.

1 Kelly Slowe: I personally would say, no it wouldn't impact it, but we would be
2 proposing would just be going back to the way it used to be two years ago, which --

3

4 Gary Jackson: Let's put some clarification on it -- The regulations haven't changed. I
5 think, even the agencies, in terms of patients hasn't changed. There are some problems with
6 enforcement. So I think it's more of an enforcement question. But again, I think that some
7 again, some people that were talking to us were concerned about shifts in programs. Again, we
8 want to make sure that companies in rural areas still have access to the program and are not
9 shifting it to companies that would otherwise need VC backing to get SBIR grants.

10

11 Kelly Slowe: Yeah, I think it's true, that a lot of the technology -- there're these sort of
12 pockets that where the major ... You know, I think that is a true fact and that some start-up
13 company in Montana, for example, you know, it's not to say that they can't, it's just one of those
14 things if they happen to be able to be successful enough and be able to promote what they're
15 doing, it's more the key of getting the -- If their technology is real promising, that's sort of what
16 the VC community looks at as far as the strength of bringing it to commercialization.

17

18 John Kline: Thank you. Jerre Glover.

19

20 Jerre Glover: Good afternoon. It's good to be here with you folks and good to chat. I
21 apologize, I didn't expect to get called on quite this quickly, but I'll be happy to visit with you;
22 just let me get my notes together. Sorry, I just walked in. Let me start off by saying I'm
23 Executive Director of the Small Business Technology Coalition and the Small Business

1 Technology Coalition is a group, we're part of the National Small Business Association, a
2 council within that and we basically are small business companies who are participate in the
3 SBIR program and have been involved with the SBIR program for some time. Many of our
4 companies have won a number of awards. Let me start off at focusing on the very specific
5 concern and issue that I have and provide with you some documents. Let me first provide you
6 the – a recent article copy of the National Seed Venture Capital Association which looks at the
7 issue of geographic distribution of venture capitals; and what you will find in this discussion, is
8 that 85% of all venture capital goes to 10 states. And if you look more carefully, you will see
9 that a very significant and more dramatic portion of it goes to just two states, which is California
10 and Massachusetts. If you also look at Exhibit B, you will see the most recent Entrepreneur
11 Magazine, which is the July Entrepreneur Magazine which looks at the 100 largest seed and
12 early stage investments. Again, comes to the same conclusion, that the companies themselves
13 are located only in certain geographic regions. Nineteen states comprise where the top 100
14 are located; there are 31 states that have no venture capital fund in making venture investments in
15 the early seed stage category. So these two recent articles are illustrative of the problem. I
16 would share with you one additional background information and this is not news to SBA,
17 because it comes from SBA's own data and what this shows is that SBA's investment – SBIR
18 investment by state. And you can look and see that the programs that SBA has made and worked
19 with in past are very effective in changing the geographic distribution of SBIR awards. And
20 what you will see in that exhibit, is where these awards have been made. When you compare
21 where venture capitals invest with where SBIR awards are granted -- again looking at the top 10
22 -- what you will see there is only 57% of SBI awards go to top 10 states, while over 85% of
23 venture capital goes to the top 10 states. So there's a significant concentration on investments by

1 venture capitalists in areas closest to them and they're generally well know and well recognized
2 that SBIR companies that SBA worked very hard through its rural outreach program and through
3 its fast programs to get companies around country to participate in the program and that's
4 worked very well. One of our chief concerns is that just geographic concentration in a few states
5 will be compounded by having the venture capitalists that control companies – we're not talking
6 about 49%, we're not talking about the clarified rule. There's been a lot of confusion in the
7 discussions today about the pre-SBA December 3 last year's regulations and the old rules. Those
8 rules did clarify some of the things and make it much cleaner. So I think that – there're a
9 number of concerns and I think we start off with a basic fundamental understanding that by and
10 large, the entire Small Business Administration, all of our programs are designed to overcome
11 some bias historical prejudice or discrimination against small minority or women owned
12 businesses and in the case of the SBIR program, prior to the enactment of the SBIR program,
13 virtually all the Federal research development dollars were spent in large firms, universities, labs
14 and institutions. The law was passed to change that. We have to remember that when there is a
15 problem, SBA and its other programs, we try to solve those problems. Only 3% of Federal R&D
16 dollars went to small business prior to the SBIR Act. The SBIR Act now allocates only 2.5% of
17 the Federal R&D dollars because we recognize there is discrimination in Federal procurement
18 policy against small business and against small innovative businesses even more so. While small
19 businesses generally get 23% of all Federal procurement, they get less than 5% of the Federal
20 R&D dollars. So that persistent discrimination that existed in the '70s is still there today. The
21 SBA has helped balance that, but without that we're going to see a very significant continuation.
22 When we allow any large company to redefine themselves as small, this is something that has
23 not happened in the history of SBA, to my knowledge; you're being asked to make a very

1 significant deviation. When we say ignore the affiliation rules, change the way we're counting
2 affiliations, for one special interest for one special program, you start down a long road that will
3 allow things to happen time and time again.

4
5 John Kline: How is it that you think opening up would be a big deal -- how does that
6 proposal effect non big deals?

7
8 Jerre Glover: There are several programs in Federal agencies. There is one called the
9 Fast program at the Department of Defense, there is the Phase 2 D program at the National
10 Institute of Health and there's a similar program at the National Science Foundation which
11 represent over 80% of the programs. Those programs incentivise companies to go out and raise
12 outside capital. They get a preference if they have good commercialization records. One of the
13 ways that this would complicate things is the VC funding would automatically mean these
14 companies got a leg up over everybody else. The VC owned company could come in and say
15 and quite frankly we've seen it in the past, we alone, because you should only give money to the
16 VC controlled companies. So they could come in and argue we're better because we've been
17 betted. Well, I've got to tell you, if you're in the middle of the United States the data shows very
18 clearly, your chance of getting VC funded is much less than it is if you happen to be in Boston or
19 California. So, that discrimination will raise the bar for the average company to have to compete
20 in winning these awards, especially because there're already programs in place that give a
21 preference if you have some VC funding. If you're controlled by VC's, I can hear the arguments
22 right now coming in saying, only let us win, but we should have a big preference because the
23 VC's blessed us.

1

2 Gary Jackson: The testimony that we received earlier today has been, even this afternoon
3 and previous hearings, biotech industry has been pointing out that a lot of the VC investment
4 going to commercialization but there're very little funds for biotech firms for proof of contact
5 research. Are there other opportunities outside of the SBIR program for those entities or again,
6 they've expressed a concern that there're just aren't the options that the NIH research programs,
7 the 97% outside the SBIR programs are geared more toward academic research. Could you
8 comment on that, what your observations are?

9

10 Jerre Glover: Well, let me tell you that in general, that has not been the case. Over 60%
11 of DOD's Phase 2 awards go on to have commercial success – commercial success, the kind the
12 Department of Defense's sell to the government or outside investments coming in to it. By and
13 large, the SBIR program has been better at bringing capital into this program than the venture
14 capitalists have. They have a much higher success rate of going from the total number of
15 applicants, which is average eight companies for every one that wins and then at Phase 2, going
16 into Phase 2 – two to one, and Phase 3 we're getting National Science Foundation and NSF are
17 pushing 40%. Now, I'm not telling you it's easy, and especially if you're in the middle of the
18 country to go out and get funding to make these things happen. There are a lot of things you can
19 do to besides sell 60-70-80% of your company to a venture capitalist; you can partner with a
20 large pharmaceutical company, you can license your technology to somebody else. You can
21 create a spin-off and go get venture funding for that – and SBA's new rules really do identify
22 those programs. So there are ways to do it. It is certainly a challenge. But many of these
23 companies are very successful. Some of them have even gone public without going to VCs first.

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John Kline: Thank you very much.

Jerre Glover: Thank you.

John Kline: Our next speaker is Karen McNeal Smith.

Karen McNeal Smith: My name is Karen McNeal Smith (S-M-I-T-H). I'm at Triangle Rent-a-Car, the car rental industry. Good afternoon ladies and gentlemen, on behalf of Frank Calana, my employer, President of Triangle Rent-a-Car branch in Raleigh, North Carolina. I would like to thank Gary Jackson and his staff for hosting this informative meeting and for allowing me the opportunity to speak. My name is Karen McNeal Smith and I'm Director of Sales and Marketing for Triangle. I guess I'm somewhat of an oddity, I've been employed at the same company for more than 20 years; and during those 20 years, I've come to understand the plight of small business. According to the SBA, a small business enterprise is defined as an independently owned and operated operation one not dominant in its field with 500 or fewer employees which meet standards as described in Public Law 95-507. The purpose of the SBA is to help foster the growth of business enterprise which has been and continues to be vital to the economic status of this country. Not only with respect to employment which is important in and of itself, but also the creation of new jobs. Congress has stated that by law, 23% of the Federal contracting dollars must go to small business. That is the responsibility of the Size Standard Division to ensure level playing field in order to foster growth, yet even the survival of small business enterprise. That said, I would now like to address the use of receipt based size

standards. Irrespective of the industry, irrespective of the product it creates or the service it provides the fairest and best gauge for determining the dominant to a company large or small would be an annual revenue receipt factored as the percentage of the total revenue receipts for that industry. This percentage indicator is the only accurate barometer of particular companies dominant in its field. When compared annually it also serves as an accurate barometer of growth or reduction for that company. The number of employees on payroll does not now, nor did it in the past, determine the stability or growth of a company. But the revenue receipts produced by those employees, however many or few, did and does determine the viability and future of the company. One huge step in simplification is to all together eliminate any weight given to the number of employees on payroll. SBA literature clearly states its designed per the level playing field for the small business enterprise and this is the one effective and fair way to achieve that goal; not only for today and tomorrow, but for years to come. Simplifying size standard is easily and fairly achieved. Consider revenue receipts, discount the number of people employed. With respect, I must state the current size standards receipts for some industries now are outdated. By considering only the overall revenue receipts for an industry and looking at the growth of the small businesses within that industry, the SBA could create its level playing field after it today, tomorrow and for years to come. This application will result in fairness across all industry lines, from the rental car industry to the office supply industry, to the construction industry and so. And it is often the case now, small companies, even those producing millions of dollars of revenue receipts yet not dominant in their industry, do not have a level playing field. Often these companies are competing daily with significantly larger companies, companies producing billions of dollars in revenue receipts. In many cases, these smaller businesses represent actually zero percent of the overall revenue receipts in their industry. Any sort of evidence abound about

1 legitimate small business and enterprises closing their doors forever due to unfair competition in
2 the process leaving untold employees jobless. Any company wishing to do business with a
3 Federal government agency must be registered in the CCR. There are several line items in each
4 company's file in the CCR; company name, NAICS Code which identifies the industry and
5 revenue receipts are in each profile. That information could be used today, in fact, to determine
6 an industry's total revenue receipts and each company's representation within that industry.
7 Right this moment, the SBA could go to the Internet and have the capability of reviewing this
8 information in the CCR. The information that already exists, could be used to simplify the size
9 standards for Federal procurement. The SBA would only have to decide what percentage of an
10 industry's overall total revenue receipts would classify a company not being dominant in their
11 industry which would automatically classify the company as a small business in our file. Should
12 the figure be 1% of the industry total in order to be classified as a small business? Should it be
13 more? Should it be less? I would like to reiterate that eliminating a company's employment size
14 in favor of using its annual revenue receipts, comparing it to the industry's total revenue receipts,
15 is exceedingly fairer than the current matter making this change will enable the SBA to create a
16 level playing field of which it speaks, today, tomorrow and for years to come. I do not envy the
17 task you have before you, I applaud your efforts to hear from small businesses, and I thank you
18 for your time.

19
20 Gary Jackson: Thank you. If we look at that approach for your industry, what
21 implications will it have on the size standards? Will it increase insignificantly? Would you
22 comment on that?

1 Karen McNeal Smith: As an example, our company is a \$34 million company. There's
2 only three companies in the United States of our size. I compete on a daily basis with a \$7.6
3 billion company. There are fewer and fewer contracts coming out from Federal procurement
4 offices indicating 100% satisfied for small business because there simply are not enough small
5 business rental car companies that can provide the vehicles that the Federal procurements need.
6 Every year at least 100 independent rental car companies go under. Currently the reports that we
7 have for our industry state that there are a lot of independent rental car companies that are
8 franchise companies. But there are only three of our size left in the U.S. and it's just very
9 difficult to compete with a \$7.6 billion company, especially when they have the ability to with all
10 the resources \$7.5 billion that they generate, they can cut their rate and I can't (if that makes
11 sense). Thank you.

12
13 John Kline: Mark Wrightsman.

14
15 Mark Wrightsman: Good afternoon. The reason I traveled from – oh, sorry. Mark
16 Wrightsman (W-R-I-G-H-T-S-M-A-N). I traveled from Minnesota today actually because I had
17 a co-worker attend an SBA meeting in Seattle a few weeks ago and we didn't present testimony,
18 but we were encouraged by Carl Jordan that this was a pertinent subject. It wasn't quite exactly
19 as some of the things that you mentioned, but very pertinent and encouraged us to attend this
20 meeting. We appreciate the opportunity to present the case of our company, Parr Systems and
21 probably many similar small companies in the U.S. who are fewer than 500 employees,
22 manufacturing companies. But because of the affiliation rules are unable to compete for
23 contracts that require small business status or compete under small business status. We really

1 think it is an issue for job growth in the U.S. and our company's competitiveness, especially
2 when companies like our own compete primarily against large, foreign-owned companies. I'll
3 give some examples of the type of work we do. As background, we're a specialized material
4 handling and automation company. We were started in 1961. Our headquarters is in Minnesota.
5 We acquired a business in Seattle at the end of 2002. Our core of our business historically has
6 been done with DOE or DOE primes. Under the Small Business Classification Rules, the
7 affiliation rules require us now, once we were purchased about three years ago by a large
8 investment company to no longer be classified as small business. We still have management
9 ownership of 42% of the business, so not quite controlling. If you visited our operations, you
10 would see it's really completely controlled by management. We went out to the capital markets
11 to get capital to invest in growth. A company called American Capital, who has investments in
12 over 100 companies, provided the capitalization. Its been good support to us. However, we no
13 longer have small business classification as a result of that. We see that SBIC –

14
15 John Kline: Does that firm vote at – for a majority ownership interest?

16
17 Mark Wrightsman: Yes. Today, they have 58% so they have financial control. But we have a
18 Board which has three outside Directors as well. Specifically, we see the affiliation rules in 13
19 CFR 21 disqualifying us whereas an SBIC is actually qualified. They happened to get Federal
20 funding but they can still classify themselves as a small business. We've gotten market capital,
21 but we cannot classify ourselves as a small business. Our request would be to look at amending
22 the affiliation rules that will allow any seed majority owned small business to maintain their
23 small business status. We're not talking about an SBIR funding, knocking away on that, so they

1 use as just a separate issue maintaining small business status when providing proposals. We're
2 really perplexed why there's a difference. We would think that it would be useful to motivate
3 the free market, gathering of capital as opposed to the SBIC, only the SBIC government capital
4 funding. A further reason is, as I mentioned before, a significant amount of our competition
5 comes from very large European-owned companies and one way for us to compete effectively is
6 to have that small business status. Finally, I don't have time today to describe the type of
7 equipment that we use, but the technology of our business is quite important to the national
8 security. We have done many projects since the early '60s where we were involved in remote
9 automation to clean up hazardous nuclear waste. We have provided projects or automation for
10 the military. Projects like that and we think it's quite important to continue our investment over
11 the next 2-3 years and it'll be significant DOE, Department of Energy small business contracts
12 awarded in some way and we'll no longer have the ability to compete on a level playing field
13 with an SBIC headed corporation or more importantly, a large, internationally funded
14 companies. We appreciate the opportunity to present this case.

15
16 Gary Jackson: Just a question verification. The company that comes with you to take
17 ownership, venture capital, financial ownership – can you describe what kinds of organizations
18 that is financial company, foreign company or is it –

19
20 Mark Wrightsman: It's strictly a financial company. So they have interest, either in equity or
21 debt and sold 120 companies, many of them – most all of them are classified as small businesses.
22 They're organized under the Small Business Investment Act of 1920 or 1980 versus the SBIC
23 1958 Act so they're business Development Company. As we read through the SBA rules intent

1 seems to be to prevent large that might have influence in the industry from unduly gaining SBA
2 type of classifications. We don't have that situation. They strictly have provided financial
3 capital for us, management investors, half a dozen large investors and another thirty-something
4 investors in the company control all the day-to-day activities from simple financial they...
5 outside company.

6
7 John Kline: Thank you. Angel Saqui.

8
9 Angel Saqui: Good afternoon. I am Angel Saqui, an architect from Miami, Florida. I
10 own a small architectural firm in partnership with my son, whose also an architect and with my
11 wife.

12
13 John Kline: Would you spell your last name for us, please.

14
15 Angel Saqui: Angel (A-N-G-E-L) Saqui (S-A-Q-U-I). Our other staff is seven persons,
16 including ourselves. Our annual yearly gross income is \$500,000. I have been in business
17 continuously since January 1972. Four and a half years ago my firm obtained 8(a) certification.
18 In that time, we have not been able to be awarded any 8(a) contracts. I am the President of the
19 American Institute of Architects probably 33 years, in it's national Board in over 35 years in the
20 greater Miami Board for the AIA. I am a member of the Miami chapter of the AIA and also the
21 National Association of Architects in Miami. Today, I am representing in my position both
22 myself and speaking for the architects. I have been in the business more – the architectural
23 business for over 30 years. This has enabled for 20 in selecting hundreds of architects all across

1 the country. Working around into architect system in small architectural business is low income.
2 ...by number of employees that does not reflect anything on the size of the business. In
3 regarding on the ANPRM most of the agencies should abide by the rules of the SBA regarding
4 size standards and other SBA rules. I have found from personal experience and particularly
5 meeting with Federal agency officials, a small architectural business outrage, but they don't try
6 to ... my business effectively with less, larger firms that after you finish your work with them
7 they gain more experience, they identify with work. There are reasons small firms in this type of
8 work must first go through early period. Regarding the current structure ... Thank you for
9 allowing me to make these comments.

10
11 John Kline: Charles Boyd. Michael Bolton. Nancy Lumpkins.

12
13 Nancy Lumpkins: My name is Nancy Lumpkins. I'm CEO of Imagine One Technology and
14 Management. My name is spelled (N-A-N-C-Y L-U-M-P-K-I-N-S). Thank you for giving me
15 the opportunity to speak before you on the NAICS Code change. We're a DOD engineering and
16 technical services company and our primary NAICS is 541330 with annual receipts of \$23
17 million. We have been in business for seven years and we're a woman-owned hub zone and 8(a)
18 certified. I should mention that size standard may be going to 140 and that would force us to go
19 from a small business to a large business just next year and only have revenue of approximately
20 \$9.5 million. We're in the infancy stages of our business development. It takes four or five
21 years of the seven that we've been in business just to get our infrastructure and accounting and
22 human resources, financial and other sorts of things in order. And we've only done less than 10
23 competitive proposals and they've been smaller in nature than the really large contracts. We

1 compete day-to-day with large DOD companies in our industry, such as Antheon, CFC,
2 Mantech, North Bruman, they're working in the same spaces with our many customers as we are.
3 And there's been significant corporate consolidations as well over the last seven years, making
4 some of these even huger. A lot of the mid-size companies have just disappeared so you have
5 very small companies and then you have these huge companies. Many of you again for the --
6 program merely disappeared due to large multiple award contracts and contract consolidations
7 and any customers taking a position that the small \$3 million set aside sole source contracts that
8 should be available under the 8(a) and hub zone program that they're too time consuming and
9 they waste too many personnel resources within their organization, so they don't put them out.
10 They are forced to go out; they are very small businesses to subcontract to the large businesses
11 and creates a situation where the large business is really controlling a lot of your -- the way you
12 want to do business. They tell you that you can't go talk to the customer and things like that.
13 They dictate a smaller profit or being on the contracts because they're very large and often times
14 they're competing with other large companies and bid smaller being somewhat as a small
15 company would. We believe the current revenue based standard are most effective, although
16 we're not against snapping and employee number 2 revenue standards in the DOD take industry.
17 Firms can easily calculate the revenue each year from their taxes and the government can
18 monitor compliance to make sure just by looking at people's taxes that that's true. It makes it
19 easy for the company and the government to monitor. We take great exception to the way the
20 SBA calculated the receipts count to employ ratio for developing the employee size standard.
21 The example SBA stated for a \$21 million receipt cap uses \$152,000 per employee, which SBA
22 states would equate to a firm with 127 employees. Normally industry receipts caps to employ
23 ratio for any small Federal or Department of Defense contractor will be on an average less than

1 100-to-1 or less. In this scenario the average \$21 million company will maintain approximately
2 210 people nearly 100 more than the SBA calculation. So you'll be forcing a lot of small
3 businesses to become large when they really shouldn't. I would recommend that the SBA review
4 the possibility of restructuring the information, professional, scientific and technical NAICS size
5 standards in a manner that promotes more efficient and effective maturing of companies instead
6 of going from small to large at a very early stage of the development, given the industry the way
7 it is right now. And the other thing I want to talk about is grandfathering. I think a small
8 business without furthering its standard during performance of a contract should be able to
9 continue performing that contract and all options. I've heard some mention that companies
10 would have to re-certify every year; and that would be against helping small businesses mature.
11 If they won a contract, they've got one year to perform on it and then have to exercise an option
12 and they're out for a year; their cap at that point – that would hurt them drastically to have to
13 switch over to be a large business at that point. If a company invest in bidding an effort, they
14 should be able to perform the entire contract and not be penalized for experiencing growth.
15 Many of the small business set asides RFP but the government actually put down for bid by
16 small bid, this for so large that it be given that the small business would have further status going
17 performance for the contract. Maybe that should be something that's looked at. Small business
18 set aside is so large they know if the government funded that whole contract and executes it, that
19 company is going to outgrow small business status during performance of the contract. But I do
20 believe that if the company outgrows small business status, the company should not be able to
21 continue on other small business set-asides. They should be able to perform on the existing
22 contract. Thank you. Any questions?

23

1 Gary Jackson: On the grandfathering provision condition, do you believe the company
2 should be able to continue to perform on contracts from the life of the contract through option.
3 How about situations where the company is purchased by a large business; do you make that a
4 different situation?

5

6 Nancy Lumpkins: Yes, I do think that's a different situation. Although I do believe that in
7 most cases that I've been familiar with an acquired company is left to operate pretty much on its
8 own for a period of years before the large business really pulls them into their company. So I
9 just look at some grandfathering provisions for acquired company possibly; I'm not sure exactly
10 how that would be but, I know for a hub zone company, we have that three-year if you're in a
11 hub zone and then (c) certified, the three-year grandfathering clause to either get out of the hub
12 zone program or get into another hub zone; and that actually did happen to us and it was a huge
13 impact on us having to move from one county to another county that was hub zone. And then it
14 was going to happen again, but the law was changed just recently where how many hub zone
15 rule certifications you fence the strap for 10 years. But some kind of grandfathering clause
16 possibly, maybe five years, maybe three – too short.

17

18 John Kline: Carol Nacy.

19

20 Carol Nacy: Thank you for the opportunity to speak today. My name is Carol Nacy
21 (N-A-C-Y). I'm a CEO of a small, very small, biotechnology company in Rockville, Maryland;
22 a state that is very rich in bio, but very poor in venture capital. I'd like to speak today about the
23 venture capital that companies competing for SBIR grants and the values that that brings to our

1 industry. The SBIR programs that we compete for are at NIH and the Department of Defense.
2 Those that are focused on development products for the things that are of interest to the Federal
3 government in particular, regardless of whether there is commercial interest in development of
4 those products. I know this because my company is a company that's solely focused on
5 Tuberculosis which has 2 Billion people infected in the world and 2 Million deaths and 10
6 Million people getting the disease, but they're not here in the United States. Yet the import
7 Tuberculosis and you need new diagnostic drugs and devises and vaccines in order to defend our
8 system has been a priority to the NIH. The amount of money in the SBIR program at the NIH is
9 minuscule compared to what it takes to bring a new drug to market. To begin for Phase 1,
10 \$75,000 to \$300,000 at MIIAD and special program, and for Phase 2 ranges from \$450,000 to \$2
11 million, just to give you a sense of taste about it, a little over a million and a half for me to go
12 from the discovery phase to the pre-clinical development phase to buy drugs for TB. The pre-
13 clinical toxicology studies that are there to satisfy the FDA, cost anywhere from \$2 million to \$5
14 million depending on whether you have to do market studies. And the clinical trials for any new
15 drug ranges from \$30 million to \$150 million. Clearly the SBIR program for small businesses
16 like mine is not going to be in the position to bring a new drug to market and yet that's what our
17 agenda is and that's what NIH would prefer to see except in the SBIR program. The only
18 outside money that we can access in that quantity would be venture money for going public.
19 You can't really go public unless you have a product in late stage clinical trial. If you were to
20 put \$15 million into my company, would you want to control what I used that money for? In
21 fact, you've already put \$10 million into my company in SBIR grants and that \$10 million has
22 gone specifically to development of a product that we were asked to develop by the NIH.
23 Venture Capital people who invest in your company want to make sure you are commercializing

1 – they want to make sure that their money goes to the actual commercialization of the product,
2 not to discovery research, not to the hire of research.

3
4 John Kline: Is there a way to do it during the first stock; outside –

5
6 Carol Nacy: The ownership – we held stock. To high net worth investors. Not at the
7 moment.

8
9 John Kline: Common stock?

10
11 Carol Nacy: Common stock. Yes. And even if you offered them preferred stock to
12 raise \$15 million at a valuation that we have as a pre-I deal, a company who would require very
13 big investors. And while I have very good investors, and many of them – they come in at the
14 \$100,000 range. It takes a lot of those to get up to \$30 million for a clinical trial. My first
15 company that I did, I'm admitting also I was young, went public without any venture financing.
16 But we had a number of high net worth individuals, who put millions of dollars in. I made a
17 particularly good deal with Bristol Myers Squid of \$78 million that allowed us to go public and
18 not have to sell most of the company to the venture capital
19 community; but that was a very large situation. It's one of two examples I know of that have
20 made a company grow through product marketing sales with no venture financing. We're really
21 between a rock and a hard place in generating money. So we're still a small business. I have 17
22 people on my payroll. There's no question that I'm small. I'm micro mini compared to most
23 companies that are out there. And the only research money that I can use for discovery research

1 is the SBIR program. I've heard it said that you can get grants from NIH and other areas, but I
2 was 18 years and academic before I moved 12 years ago to industry. I still review grants. I
3 know how many companies are successful and the other grants of the program; and they're not
4 many, primarily because all research is not hypothesis driven research.

5
6 John Kline: How structures are that you can put company and eight other workers hold
7 majority

8
9 Carol Nacy: I currently have no venture plan. I am finishing up a venture financial
10 round this summer, my very first. You can match it with Tuberculosis as a subject, it's been
11 quite a bit sale of the financial community to get everyone interested. So my biggest fear – I
12 have two SBIR grants pending funding this summer and those will disappear if I complete my
13 financing. You caught me between a rock and a hard place. I either do research and bring new
14 products there for the public health of this country or I do commercial development and get the
15 drugs out to the clinics, where they need it. It's one or the other. I can't do a venture financing
16 without the research, and yet I can't do any further research without venture financing because
17 that money will go to the very expensive clinical trials for the new drug that's ready to go to
18 clinic now. The only other issue that I wanted to say is that I have been told several times by
19 others that people in non-biotechnology – see, but it would be unfair to change the rules for
20 biotech because that unfairly provides a competitive edge for biotech with SBIR funds. But I
21 just want to remind you that the NIH funds are only open to people who are creating products for
22 medical research; and that the only place where we compete for SBIR funds so we can help each
23 other in the biotech industry. Thank you very much

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John Kline: Thank you. Arthur Wenk.

Arthur Wenk: Good afternoon. My name is Arthur Wenk (W-E-N-K). Thank you for your time and opportunity to address the panel as a small business owner. I've been an owner of Landmark Resources, Inc., doing business as Express Personnel Service in Springfield, Virginia for almost seven years. I'm an electrical engineer by degree and I previously worked in large public corporations such as Nynex and Edison Electric. I left the corporate environment 14 years ago to start a new business which I sold 5 years later then opened my present business, Express Personnel Services. When I was considering going into the staffing industry, I felt that I had two options for my success. The first option was to list the services of staffing funding company, to do all my back-office administration including funding, pay rolling, billing, business analysis reports, and business forms. The other consideration was to go with a staffing franchise. The franchise system offered me exactly the same services of the funding company. But in addition, it had a documented proven system for marketing sales. Since this business was all new to me, I chose the franchise for its training and support. Both options offered exactly the same financial risk as small business owner. The franchise system does not provide me with any asset protection. I'm operating totally independent of my franchiser. Just as I would be operating independently working with a staffing funding company, during my seven years of business, I ran into down time of the economy after 9/11, which almost put me out of business with large debt. Clients of mine went out of business owing me money. My franchises did not share their assets with me in order to be bailed out of my financial situation. After my ... the money -- I've had to keep franchiser ... it all comes out of my pocket.

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John Kline: You paid -- the franchiser that was working for the clients; were you paid back, or --

Arthur Wenk: Right. We split the ends. But I had total 100% liability. If the client doesn't pay the bill, the money doesn't come into, you know, our group, I have to write a check; just as I would to a bank or to a funding company. It's exactly the same.

John Kline: The client, how do they pay? Do they pay you directly or do they pay the franchiser?

Arthur Wenk: The billing comes out of -- the franchiser. That's the service I pay for just as if we have a funding company. So, I have my accounts receivables and all the reports are generated by the franchiser.

John Kline: Okay.

Arthur Wenk: Again, it's a service that I pay for.

John Kline: That you have chosen whether or not you go with your group for example, do you remember, could you choose another firm to do your entire service as one investor?

1 Arthur Wenk: Sure. I could go – well, I would have had to make that decision before I
2 signed my franchise agreement; but absolutely.

3
4 John Kline: The franchise agreement requires you to go through the franchiser –

5
6 Arthur Wenk: That's correct. And it's actually to my benefit, because it just simplifies
7 everything. I want to resile for just a second. Like I said my -- going out of business, my
8 franchise did not share their assets with me in order to bail me out of my financial situation.
9 After my personal bank account went to zero, we lived on credit card debt to pay my staff, the
10 random personal expenses. When the debt hit \$40,000 the economy turned around and saved us.
11 We were weeks away from closing the doors. Express Services was only there to say goodbye.
12 My reason for asking for this consideration today, is that I'm currently operating at a competitive
13 disadvantage to other organizations. We are not a large company or organization with the very --
14 but we are not considered a small business under the current guidelines. I do not qualify for
15 SBA loans, I do not qualify for certain job opportunities. A have a few points I'd like you to
16 consider. I have the same financial risks as any small business, especially staffing business,
17 whether franchise or not. My association with Express Services, Inc. does not afford me with
18 any asset advantage over the other small businesses. I'm a small business. I have three
19 employees. With all the risks that small business encounters my business is an independent
20 corporation, have my own Federal I.D. number, state holder pass I.D., Worker's Comp., state
21 unemployment account. My business is separate and distinct from the franchiser Express
22 Services. The franchiser has no oversight or responsibility for my day-to-day business

1 operations. I have the sole responsibility for recruiting, screening, hiring, disciplining,
2 terminating temporary employees. I assign them to their respective clients.

3
4 John Kline: If don't want to leave once -- who is to blame for that, you or the
5 franchiser?

6
7 Arthur Wenk: The franchiser is invisible to my clients.

8
9 John Kline: If the franchisee – you and the franchiser went out of business, would the
10 franchisee be associated with the franchiser or what would happen ...

11
12 Arthur Wenk: Well I guess I can do a few different things. I think primarily, if I were
13 going out of business, the company that I'd be working with would just either result as
14 franchisees under the payroll or look for another organization that could staff it.
15 Demographically, I might not have the opportunity to turn it over to another franchisee and ask it
16 to pick up the payroll. I have a few other points if you'd –

17
18 John Kline: Okay.

19
20 Arthur Wenk: Well I guess I just – just bear in mind, the entire risk of financial loss from
21 this business operations. My – I retain the majority of the profits of the business, I maintain day-
22 to-day control of the operations. There is no common ownership or management because it's a
23 franchise owned franchise. Thank you for your time; I appreciate it.

1

2 John Kline: We'll have one more person, then we'll have a quick break. Karl Nurse.

3

4 Karl Nurse: Good afternoon. How are you guys doing? I traveled from Boston to

5 Washington, DC, the airplane was an hour late, I ended up in Baltimore, so I got -- stopped at

6 Amtrak and then I got a public bus, it took me to the wrong place, I got here, I called the SBA to

7 find out where this was, \$8.00 and I got here. First I want to thank the members of Small

8 Business Administration for welcoming me speak at the hearing today. My name is Karl (K-A-

9 R-L) Nurse (N-U-R-S-E) as in Doctor. I am the President and CEO of Karl Nurse

10 Communications, Incorporated, a DARE production and television broadcast company

11 headquartered in Boston, Massachusetts. Before presenting specific recommendations I'd like to

12 briefly review some of the facts of how the SBA has benefited businesses in Massachusetts and

13 my own. We got started some 10 years ago after having worked for many networks in my area.

14 According to the Office of the SBA Director in Massachusetts, the Administration serves about

15 600,000 small businesses in the Commonwealth. Last year it provided some 4,000 businesses

16 with loans totaling over \$4 million worth of funds that those businesses, without SBA not have

17 been able to obtain with as favorable terms from other lenders. The SBA in Massachusetts has

18 also provided counseling and conducting business with almost 40,000 businesses in stock

19 participation in the SBA's wide range of programs. I too have taken advantage of the SBA's

20 counseling services and pleased to tell you that I receive email alerts from the SBA notifying me

21 of opportunities to submit proposals for government contracts. Anything with the word

22 "communication" comes my way, even if it's seeds or farm, you name it; it arrives. So, I'm so

23 pleased to receive the communications. What I'm concerned about is size. If the SBA were to

1 move the threshold to allow the entry of much larger businesses, my company, into the small of
2 this pool; my company and many others would be at risk of being pushed out the marketplace.
3 At best, we would be at a serious competitive disadvantage among larger firms in possession of
4 greater resources. This is my position, that such a change would make a mockery of any
5 pretential to a level playing field and to the American dream of individual business ownership,
6 not only small proprietorship that's made this country great, but small businesses will make
7 different ownership structures. This could have a drastic impact on the employment, new job
8 creation and U.S. economy as a whole if not taken and considered a serious move, in terms of
9 what size is small businesses. So, I'm here today to speak about this here size standard on any
10 SBA entrepreneur, but also on behalf of the New England Minority Safari Development Council,
11 an advocacy group for minority businesses, most of which are located in the metropolitan Boston
12 area; and I serve as the Chairman of the group's minority business enterprise and represent the
13 interests of 300 small minority businesses. The primary purpose of my testimony is to provide
14 the SBA with a constructive approach to simplify and restructure size standards and to make size
15 standards easier to understand and to apply. We've been working with the Minority Business
16 Enterprise legal defense and education fund. We've been working with the MBEC and we've
17 been working with the New England Minority Safari Development Council with regard to the
18 SBA's proposal to change the small business size standards. The MBELDEF which is the Legal
19 Defense and Education Fund, founded by former Congressman Barron Mitchell, has operated for
20 25 years the public interest law firm and has served minority enterprises by engaging in
21 litigation, testifying before Congress and providing federal, state and local governments with
22 legal guidance. The MBELDEF and MBEC and the New England Minority Safari Development
23 Council consider the issue of the SBA size standards as one of the most important things that the

1 Federal government has embarked on in the last 50 years. Obviously, small American
2 businesses are very concerned of the impact that the proposed standards could have on their
3 successful competition in the marketplace. The MBEC and the MBELDEF recommends a three-
4 tier size standard. It had proposed to SBA earlier this year the recommendation which was
5 developed with inputting small minority business owners outline a strategy regarding how the
6 government might allocate contracting opportunities based upon a company's size. We're
7 convinced that this strategy is important because without specifying contracting opportunities
8 small businesses of all sizes, it is likely that only large businesses would irrigate to obtain and
9 execute government contracts. Large businesses are able to avail themselves to the economies of
10 scale as well as the economies of influence, while small businesses are limited by or excluded
11 from such opportunities. Therefore, we suggest the following summary. The proposed solution
12 for the size standard issue is incorporated in a 5-10-5 formula. And this specific
13 recommendation is something that has been presented to the SBA before earlier and that I adhere
14 and you can calculate into it. If, in fact, you were to take the total gross revenue of both public
15 and private sectors and determine the average revenues of those corporations of the last five
16 years, you would have a number – take ten percent of that average revenue and it will become
17 the top level of a five tier small business structure which pushes itself down to its five tiers, 20%
18 at a time, per tier level. When the large firms are hot in the next – moving down from the tiers at
19 20% associated with the tiers of these employment size standards are the following: the
20 following push down points 1500, 1000, 500, 300, 100, 50 and below. Our first recommendation
21 is that one can take a look at this, a lot of people have, they take a look and feel worse ... a lot in
22 agreement that think that this is a proposal that deserves some merit in your consideration. So
23 thank you again for allowing me to speak on behalf of small business and small minority

1 businesses in the Commonwealth of Massachusetts. I appreciate your serious consideration for a
2 size proposal in the well being of so many people in Massachusetts and across the country. So,
3 if you would so please me, I would like to take this and I would also like to enter the testimony
4 of Kenny Dalprin, Chairman and CEO of Springwood Technology Corporation, Springfield,
5 Massachusetts. Thank you very much.

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7 *[3:25 p.m. BREAK]*

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9 *[RESUME -- 3:35 p.m.]*

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11
12 John Kline: The next person will be Ken Rogers.

13
14 Ken Rogers: Good afternoon. I'm Ken Rogers. Executive Vice President of Ideal
15 Electric Supply Corporation. I know everybody is refreshed after a little break. Most of the
16 testimony I've heard earlier this afternoon, pertain to IT companies and other companies that
17 provide those kinds of services. Our industry is very different and there hasn't been much
18 attention given to our industry. Let me back up and say, I appreciate being here to be involved in
19 the comments on this important issue. We are a wholesale distributor of a large variety of
20 electrical, telecommunications, industrial and safety products. Our primary customer base
21 consists of energy utility companies, federal and municipal governments and large contractors of
22 many government funded construction programs. We have operated in the District of Columbia
23 for nearly 20 years. We are a small business with 13 employees that are directly engaged in

1 product sales and distribution. Our revenues vary between \$10-\$15 million per year for the last
2 several years. My comments address the issue of size standards as they relate to the non-
3 manufacturing sector. In particular, when the SBA sort of arbitrarily changed the non-
4 manufacturing size standards from 100 to 500 employees, it created grossly uneven playing field
5 for Ideal Electric and most other companies with less than 100 employees, as you know, who
6 make up 98% of all the businesses in this country – of less than 100 employees. Many states and
7 municipalities around the country will rely on the Small Business Administration standards as a
8 basis for certifying companies that are small. Here in Washington, DC we find ourselves
9 frequently attempting to compete for Federal government and other public funded business with
10 companies more than 20 times our size and revenue, but certified as small, using the SBA
11 standard of 500 employees -- certified as small, using the SBA standard of 500 employees 20
12 times our revenue. I want to reemphasize those points. Contractual requirements for certain
13 portions of jobs to be set aside for small businesses are deemed to have been met when the
14 requisite spending goes to a \$200 million fund for years acquired for 300 or 400 employees.
15 This hardly seems consistent with the spirit or intent of the Small Business Act. Contracting
16 officers and other officials of these governments and governmental agencies very often laugh
17 eloquently about the dollars being spent with small and disadvantaged businesses; when in fact,
18 the vast majority is going to the large businesses with the small business certification. This
19 loophole should be closed and there should not be any grandfathering. By returning to 100
20 employees from the current 500 as a benchmark for non-manufacturing firms, the SBA will
21 allow over 23 million small businesses to compete for government business on a fair and
22 equitable basis. These are the companies that Congress was trying to help when they created the

1 Small Business Administration and the Small Business Act. That concludes my comments.

2 Thank you.

3
4 John Kline: Thank you. James Mannard. Janet Myhre.

5
6 Janet Myhre: My name is Janet Myhre, spelled (M-Y-H-R-E). Today I'm representing
7 Chuckles Office Products which is an independent office products distributor business, which
8 has 11 years of established market presence in both the commercial, local and federal
9 procurement sectors. In addition, I am representing in recording position of my affiliated trade
10 association, National Independent Office Products and Furniture Dealers Association. I had the
11 opportunity to meet Mr. Jackson this past March, when he provided an overview of the small
12 business size review of independent office products and furniture dealer's association national
13 legislative conference. I know that he has worked closely with our industry and our
14 representative, Paul Mellard, Director of Government Affairs in Washington, DC, with respect to
15 this very issue, and its impact on small businesses across the country and I thank him for that.
16 As I move from General Manager of this small business to Director of General Services Division
17 and relocated to the Nation's Capital, the further challenge that embraces me is both the
18 opportunity that federal procurement comes to this organization but also the frustration in
19 competing against mega-conglomerates in which 4 organizations represent close to 75% market
20 share. As I'm sure no one individual can testify today the economic data continues to show that
21 the size and expert skill of individuals who engage in the small business sector and the statistics
22 that continue to show that we are the backbone of the economy. We continue to experience
23 small business precedent in market protection and federal contracts. Even with the currently

1 slated mandate for small business contracting goal, year after year as representative Lydia
2 Valezquez, the Democrat from New York proposes in her annual scorecard, that Federal
3 agencies and small business contracting goals continue to receive a failing grade and that is a
4 fact. They continue to not meet even the smallest of small business contracting rules. A case in
5 point of which we are continuing to engage in competition within our industry which represents
6 5,000 small businesses with this very agency. The Small Business Administration has entered
7 into a supplier relationship with the industry conglomerate Office Depot not even providing
8 outrage to those small businesses in this industry. In my opinion, the industry in which I am
9 representing today, the office products, office furniture industry is the poster child of the very
10 issue that Small Business Administration is taking. In determining an equitable application of
11 policy both in small and large businesses that it impacts. Chuckles, NOPA and OFDA would
12 like request that the SBA reconsider its original size determination for the Office of Fine Office
13 Furniture industry and instead the of the 50 employee rule, NOPA also requests that the 500
14 employee standard continue to be applied to all programs to include Federal procurement
15 opportunities. The following comments are being submitted on behalf of the National Office
16 Products Alliance and Office Furniture Dealers Alliance regarding the small business SBA
17 proposed rules.

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19 John Kline: Are you saying that you want 500 employees standard across the board?

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21 Janet Myhre: Yes.

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23 John Kline: For all industries?

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Janet Myhre: Yes. Right now we have 25 employees, but our revenue is \$6 million or \$7 million, so we don't qualify for any other programs under the SBA.

John Kline: And you have how many employees: Janet Myhre: 20 – 27. We fall into Federal contracting; we're fine there, but any other program, when it – or NAICS Codes, having \$6 million.

John Kline: So the 50-employee were – were to be part-time ...

Janet Myhre: Yes, but as we continue to try to go after contracting work, that stop gap from 50 to 51 will eliminate us to continue to grow in other areas.

John Kline: So the 500-firms ...you use, you only spend it your top dollars in revenues?

Janet Myhre: Did our industry; because there is such a large gap, I mean I was going to go into that a little bit but there is the within the industry, you go from four major players which have you know, combined \$170 million in annual revenue, to 5,000 small independent businesses with a huge gap between it.

John Kline: In the large companies, are their employees part-time?

1 Janet Myhre: I don't have that statistic. The proposed – they will be out there; they have
2 full business services, that kind of thing, retail operations, that type of thing. Another relative
3 breakthrough. Obviously everyone knows what is involved in office supplies – it's a lot of
4 pencils. One of the things that we'd like to also address is the current proposed regulation that
5 treats part-time employees in the count. By using this formula, the SBA is only putting true
6 small businesses at a bigger disadvantage. One of the things we'd like to consider is part-time
7 employee cutting the formula by using a factor of 3-to-1 ratio meaning 3 part-time count as 1.
8 That should be –

9
10 John Kline: Well, what is part-time? Is 35 hours --

11
12 Janet Myhre: In our policy it's less than 35 hours per workweek, which say you don't
13 qualify for any other benefits or anything like that.

14
15 John Kline: Do you think 3-to-1 is better than a full-time employee?

16
17 Janet Myhre: Yes.

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19 John Kline: Why is that?

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21 Janet Myhre: Well, because there're variances between actual part-time work. You can
22 have a summer hire that comes in or an after-school hire that comes in, you can have somebody
23 that actually works only half days. So any kind of -- I mean the hour can go to 30-hour weeks

1 as the criteria. But put a ratio of 3-to-1 part-time employee to 1 full-time employee. We've
2 heard a lot of stuff about how SBA's supposed to champion small businesses, so I won't rant and
3 rave about that, but I know within our industry, that is what we're dealing with. We have 5,000
4 small businesses that spread throughout the country; most of them are, you know, family-owned,
5 generational -owned, they divide the big onslaught of the box players coming in, in the 1990's
6 decimating the industry and how they used to facilitate or service their community. One of the
7 things we've done in the last year to compete on the federal contracting level is we've created
8 what's called teaming arrangements where associations have got together and they have been the
9 master contract holders, they've gotten the GSA schedules and underneath that affiliated
10 businesses or selling underneath that already, that schedule. So for one of the things, it's a non-
11 profit level of -- they only had -- it doesn't sell direct or anything, but it is a co-op with the
12 underlying agency.

13
14 John Kline: Thank you very much. Ronald Evans.

15
16 W. Ronald Evans: Good afternoon ladies and gentlemen. My name is W. Ronald Evans. I'm
17 the President of the National Business League, a small business trade association founded by
18 Booker T. Washington in 1900, about eight years before the U.S. Chamber of Commerce. Today
19 I'm here to express the concerns of our Board of Directors, and the chapters and members of
20 from over 37 states. We represent the interests of over 8,000 African American businesses,
21 business owners in America and the world. We're doing a lot of things in the African nation as
22 well. We're members of the Minority Business Center Committee and support their efforts to
23 establish the sense of fairness and redesign of the small business size standards. The first thing,

1 the size standard is establish a threshold of which our membership is measured for future growth
2 and activity. Traditionally small businesses have been frozen out of lucrative Federal
3 procurement opportunities because either they are too small to be deemed qualified or too large
4 or too small. So it's very important that a formula be devised to ensure that small businesses are
5 given a chance to compete with other similar businesses in the industry. The multiple tier
6 approach to size standards seem to be the road of fairness and competitiveness that arouses
7 stance for Federal procurement. Revenue goals alone don't satisfy the description of small
8 business because the revenue pass-thru for different industries do not reflect their levels of
9 employees required to carry out a particular business function. For example, wholesale suppliers
10 had a higher revenue base because most of their costs are associated with cost of their sales
11 rather than the number of employees. Likewise, the amount of sales and employees in the
12 information technology industry is very different than the number of employees and sales in the
13 retail industry. We recommend a formula that will give the small business owner an opportunity
14 to compete with similar sized businesses in their industry and then market share of the small
15 business for you to control, factor determining the small business, determine the best measure
16 and the size standards for federal policies. It should reflect the need of strengthen the U.S.
17 economy their any small business that hire U.S. residents. The African American community
18 cannot afford to lose any more economic ground to large businesses, and I propose to
19 government that any social ills experienced in our community is a direct result of unfair rules and
20 regulations promulgated by Federal agencies that just don't get it. Love is helping the U.S.
21 focus to succeed in the global economy. The lastability and determining to keep are rather
22 strong and stimulate economic growth in the African American community. We will certainly
23 answer any questions and would like to have opening on the record to consider all possible future

1 comments on this. Thank you for the opportunity to come before you. I certainly appreciate
2 your allowing me to come here. Thank you very much.

3
4 John Kline: Thank you. Dawn Patillo.

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6 Dawn Patillo: Good afternoon, my name is Dawn Patillo (D-A-W-N P-A-T-I-L-L-O),
7 and I'm Senior Task Leader for GS' metric protégé program, a project that I got a small business
8 \$6 million contract for the company. I'm appearing today on behalf of the Information
9 Technology Association Of America (ITAA), in my role as Vice Chair, ITAA Small Business
10 Subcommittee. On behalf of ITAA, I would like to thank SBA and the members of the hearing
11 panel for conducting these public hearings, providing this hearing for people to comment on the
12 future of the Small Business Administration Size Standards. My comments today will focus on
13 an issue of great importance in the IT industry, the restructuring and simplification of the SBA
14 size standards. As a general matter, ITAA shares the SBA's objective in simplifying and making
15 small business size standards easier to apply, This objective must be achieved, however, while
16 taking great care to ensure that any further revised size standard does not adversely affect small
17 business participation in a Federal government market. ITAA and other organizations were
18 concerned that the SBA's proposed rule issued in March 2004 would have had such a negative
19 effect. We commend the SBA for withdrawing the proposal and taking a premium approach at
20 issuing Advanced Notice of Proposed Rulemaking (ANPRM) solicit the ideas and comments of
21 all people on this very important issue of how the size standards should be restructured. The
22 SBA's ANPRM issued in the summer 20004 offers a unique opportunity to significantly
23 improve the small business size standards; particularly, small businesses participating in federal

1 procurement. As its testimony, ITAA submitted to the SBA on April 1, 2005, ITAA has four
2 major recommendations that it urges SBA to consider as it begins to formulate the new concept
3 for the small business size standards. First, ITAA recommends that SBA establish a separate and
4 distinct set of size standards of applicable solely federal procurement. This remark or return to
5 the approach used by the SBA prior to the change in the early 1980's to a common set aside
6 standard applicable to all SBA's programs. Reportedly, the rationale that supported the change
7 from having a set aside standard change in federal procurement to a common set aside standard
8 more than 20 years ago no longer exists. For example, the size and complexity of federal
9 procurements has changed; so significantly, such that even those procurements deemed to be
10 relatively small today, financing significant resources in terms of finance ability, equipment,
11 manpower and geographic rep in order for a contractor to be competitive. It means as a result of
12 this – several agencies will follow the ITAA requirements and watch agencies in geographic
13 regions in order to increase their buying power or in terms of – governments procurements today
14 generally require much more in terms of resources that a typical contracting opportunity can in
15 purchasing option.

16
17 John Kline: In terms of this rule size standard, how are they different? Would one be
18 larger than the other? How would you make that?

19
20 Dawn Patillo: Treat them strictly as several procurements. Apart from all the other
21 programs, simplifying the size classifications so it's just, for example, your separate service is
22 professional services and disregarding the NAICS Code, that group is a segment of large
23 industry classification, the professional services category would encompass all professional

1 service codes, including those associated with IT. So in that segment you would have --
2 professional services would be an actual funder of employees or are \$50 million in annual
3 revenues.

4
5 John Kline: Or meaning what? Is it small or large?

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7 Dawn Patillo: Instead of count where I presented earlier where the SBA wanted so many
8 employees and a certain revenue. We're saying either or.

9
10 John Kline: Does it mean or just do your own thing?

11
12 Dawn Patillo: Yeah.

13
14 John Kline: You recommended different sizes of procurement; did you mean to take
15 this from the loan program?

16
17 Dawn Patillo: Yeah.

18
19 John Kline: And the loan companies would remain at --

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21 Dawn Patillo: Everything at the SBA ... There would be just one standard for
22 professional services. An employee would have a cap -- 500 employees. And small professional
23 services, you'd have to develop the infrastructure as they compete for federal government

1 contracts. A 500 employee standard is also a more accurate reflection of the size today of a
2 professional services company that could be in the Federal market. Secondly, I feel that \$50
3 million average over three years will permit my businesses that successfully win large Federal
4 procurements to remain eligible for small business procurements as they continue to develop
5 their business. And the third point is to expand the expanded revenue ceiling or address the
6 problem encountered by many small businesses of entering a dead zone or nimble zone where
7 they must compete with large business' buyers where they develop the competitive strength to
8 do so. The third main point, in an effort to provide transition support during the entire life of a
9 small business ITAA urges SBA to revise the credit awarded under small business prime and
10 sometimes – goal. To encourage contract awards to two types of small businesses, those small
11 businesses will graduate as small businesses. A very small business will be defined as a
12 company with less than 250 employees or \$25 million in revenues. The federal government and
13 the prime contractor would receive double credit for their respective small business contracting
14 or subcontracting goals for all the awards directed to their small businesses. A graduating small
15 business will be classified as no more than 750 employees or \$75 million in revenue. The federal
16 government and prime contractor would receive half credit for their respective small business
17 contracting or subcontracting goal for all the awards directed to graduating small businesses.

18
19 John Kline: Your time is up. Do your last one.

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21 Dawn Patillo: Fourth and final, ITAA recommends that for any new structure for the
22 size standards, the SBA use a grandfathering approach to transition currently eligible small
23 businesses to the new size standard.

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John Kline: The U.S. pay for that?

Dawn Patillo: In other words, they would be eligible as a small business under current size standards should remain unharmed as a small business notwithstanding any change to the size standard. As far as a new business, a firm would go after and they would be considered whatever the current standard.

John Kline: Thank you. John Woods

John Woods, Jr.: My name is John Woods, Jr. (W-O-O-D-S). Today I'm speaking on behalf of my professional engineering firm, Woods Peacock Engineering Consultants as well as the American Council of Engineering Companies. Woods Peacock Engineering Consultants is a small 14-person disabled veteran owned structural engineering firm located in Alexandria, Virginia. I co-found it in 1999 after 29 years of experience with another firm. Our firm with annual revenues of less than \$2 million provides structural engineering and project management services for the renovation of existing buildings, business security projects, aviation projects, communications projects, as well as new buildings. In March 2004 SBA proposed to bring engineering code 541330, standard for \$4 million in annual gross receipts to a new standard of 50 employees with an additional cap of \$7 million in gross receipts. That number would incorporate about 95% of all of the consulting engineering companies in the United States. Upon consideration of this proposal, and I have a number of concerns. First and foremost, the proposal was implemented to test for businesses attempting to prove their small business status. We felt

1 that implementing to test would be burdensome on small businesses and was contrary to SBA's
2 intended goal of in simplifying size standards. Additionally, the current size standards based on
3 gross receipts only has proven to be an effective measure to small businesses within the
4 professional industry. Implementing an additional category based on a number of employees
5 would have a negative consequence of eliminating some small engineering firms whose revenue
6 is actually less than \$4 million. It would also encourage firms to manipulate their staff levels and
7 increase subcontracting in an attempt to take advantage of the new system. You put out the
8 ANPR. Of primary interest to my firm and ACEC with a receipt based sized standard in
9 relationship between size standard and federal procurement, tiered size standards are
10 grandfathered. Received based size standards should be maintained.

11
12 Stephanie Watkins: I'd like to thank everyone for coming and hope you have a great weekend.

13
14 *[END -- 5:18 p.m.]*
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